

ROBBYE RAY ANDERSON

NAME

E39592

PRISON NUMBER

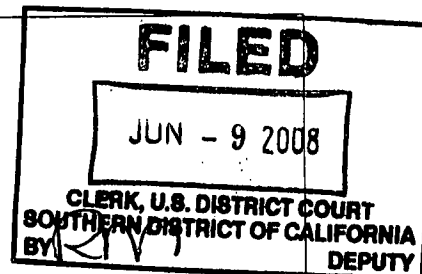
CRC-PO BOX 3535 - 303-224

CURRENT ADDRESS OR PLACE OF CONFINEMENT

NORCO, CA. 92860

CITY, STATE, ZIP CODE

2054	1988
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Yes	No <input checked="" type="checkbox"/>
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Yes	No <input checked="" type="checkbox"/>
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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

ROBBYE RAY ANDERSON

(FULL NAME OF PETITIONER)

PETITIONER

v.

M. MARTEL, WARDEN

(NAME OF WARDEN, SUPERINTENDENT, JAILOR, OR AUTHORIZED PERSON HAVING CUSTODY OF PETITIONER [E.G., DIRECTOR OF THE CALIFORNIA DEPARTMENT OF CORRECTIONS])

State of California

RESPONDENT

and

JERRY BROWN

The Attorney General of the State of California, Additional Respondent.

Civil No. '08 CV 1031 W AJB

(TO BE FILLED IN BY CLERK OF U.S. DISTRICT COURT)

**PETITION FOR WRIT OF HABEAS CORPUS**

UNDER 28 U.S.C. § 2254  
BY A PERSON IN STATE CUSTODY

1. Name and location of the court that entered the judgment of conviction under attack: San Diego Superior Court, Dept. 28 - 220 W. Broadway - San Diego, Ca. 92101
2. Date of judgment of conviction: July 27, 2006
3. Trial court case number of the judgment of conviction being challenged: CD198047
4. Length of sentence: 10 years with 80%

5. Sentence start date and projected release date: September 19, 2006  
Projected Release Date: March 15, 2014
6. Offense(s) for which you were convicted or pleaded guilty (all counts): CT.1-(11352A) Furnishing-Giving Away  
CT.2 (11351.5) Possession Of Narc. CNTL Sub.  
CT.3-(11364) Possession Of Paraphernalia.
7. What was your plea? (CHECK ONE)
- (a) Not guilty ☒
- (b) Guilty ☐
- (c) Nolo contendere ☐
8. If you pleaded not guilty, what kind of trial did you have? (CHECK ONE)
- (a) Jury ☒
- (b) Judge only ☐
9. Did you testify at the trial?
- ☐ Yes ☒ No

**DIRECT APPEAL**

10. Did you appeal from the judgment of conviction in the California Court of Appeal?
- ☒ Yes ☐ No
11. If you appealed in the California Court of Appeal, answer the following:
- (a) Result: Appeal was Denied
- (b) Date of result, case number and citation, if known: December 5, 2007  
Case no. D049483
- (c) Grounds raised on direct appeal: The Trial Court Deprived Mr. Anderson Of A Fair Trial And Due Process Of Law Under The Sixth And Fourteenth Amendments To The United States Constitution When The Court Allowed The Prosecutor To Introduce Evidence Of Mr. Anderson's Previous Conviction For Selling Cocaine. See Attached
12. If you sought further direct review of the decision on appeal by the California Supreme Court (e.g., a Petition for Review), please answer the following:
- (a) Result: Denied
- (b) Date of result, case number and citation, if known: February 13, 2008  
S159550 or D049483
- (c) Grounds raised: The Trial Court Erred in Admitting Evidence Of A Prior Offense And Allowing The Prosecution To Reopen Its Case To Admitt Booking Photographs From The Prior Offense Without Mr. Anderson Taking The Witness Stand.

13. If you filed a petition for certiorari in the **United States Supreme Court**, please answer the following with respect to that petition:

(a) Result: \_\_\_\_\_

(b) Date of result, case number and citation, if known: \_\_\_\_\_

(c) Grounds raised: \_\_\_\_\_

#### **COLLATERAL REVIEW IN STATE COURT**

14. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the **California Superior Court**?

☐ Yes ☒ No

15. If your answer to #14 was "Yes," give the following information:

(a) **California Superior Court** Case Number: \_\_\_\_\_

(b) Nature of proceeding: \_\_\_\_\_

(c) Grounds raised: \_\_\_\_\_

(d) Did you receive an evidentiary hearing on your petition, application or motion?

☐ Yes ☐ No

(e) Result: \_\_\_\_\_

(f) Date of result: \_\_\_\_\_

16. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the **California Court of Appeal**?

☐ Yes ☒ No

17. If your answer to #16 was "Yes," give the following information:

- (a) **California Court of Appeal** Case Number: \_\_\_\_\_
- (b) Nature of proceeding: \_\_\_\_\_  
\_\_\_\_\_
- (c) Grounds raised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (d) Did you receive an evidentiary hearing on your petition, application or motion?  
☐ Yes ☐ No
- (e) Result: \_\_\_\_\_
- (f) Date of result: \_\_\_\_\_

18. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the **California Supreme Court**?

☐ Yes ☒ No

19. If your answer to #18 was "Yes," give the following information:

- (a) **California Supreme Court** Case Number: \_\_\_\_\_
- (b) Nature of proceeding: \_\_\_\_\_  
\_\_\_\_\_
- (c) Grounds raised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (d) Did you receive an evidentiary hearing on your petition, application or motion?  
☐ Yes ☒ No
- (e) Result: \_\_\_\_\_
- (f) Date of result: \_\_\_\_\_

20. If you did *not* file a petition, application or motion (e.g., a Petition for Review or a Petition for Writ of Habeas Corpus) with the California Supreme Court, containing the grounds raised in this federal Petition, explain briefly why you did not:

Defendant Did File A PETITION FOR REVIEW TO THE  
SUPREME COURT.

### **COLLATERAL REVIEW IN FEDERAL COURT**

21. Is this your first federal petition for writ of habeas corpus challenging this conviction?

☒ Yes ☐ No (If "YES" SKIP TO #22)

(a) If no, in what federal court was the prior action filed? \_\_\_\_\_

(i) What was the prior case number? \_\_\_\_\_

(ii) Was the prior action (CHECK ONE):

☐ Denied on the merits?

☐ Dismissed for procedural reasons?

(iii) Date of decision: \_\_\_\_\_

(b) Were any of the issues in this current petition also raised in the prior federal petition?

☐ Yes ☐ No

(c) If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this second or successive petition?

☐ Yes ☐ No

### **CAUTION:**

- **Exhaustion of State Court Remedies:** In order to proceed in federal court you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. This means that even if you have exhausted some grounds by raising them before the California Supreme Court, you must first present *all* other grounds to the California Supreme Court before raising them in your federal Petition.
- **Single Petition:** If you fail to set forth all grounds in this Petition challenging a specific judgment, you may be barred from presenting additional grounds challenging the same judgment at a later date.
- **Factual Specificity:** You must state facts, not conclusions, in support of your grounds. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do. A rule of thumb to follow is — state who did exactly what to violate your federal constitutional rights at what time or place.

**GROUND FOR RELIEF**

22. State *concisely* every ground on which you claim that you are being held in violation of the constitution, law or treaties of the United States. Summarize *briefly* the facts supporting each ground. If necessary, you may attach pages stating additional grounds and/or facts supporting each ground.

(a) **GROUND ONE:** Equal Protection And Due Process Rights, Of The Law. The Court Allowed The Prosecutor to Introduce Evidence Of Previous Conviction For Selling Cocaine. Supporting FACTS (state *briefly* without citing cases or law) Without The Defendant Being A witness, Defendant was Deprived by The Court In Trial Under The Sixth And Fourteenth Amendments. The Court Prejudice The Jury By Bringing Officer Ries in The Trial Court As A witness, Telling Them About The Case, For Sales In 2000. This Case was One Officer Claiming The Defendant Just Gave Him 0.07 of A Gram OF Cocain for FREE. Defendant was Not Of Possession Of Any Narc. Nor Possession Of Any Pre-recorded Money When He was Arrested.

Under The United States Constitution, All Citizens Are Protected Under This Clause And Given The Same Rights As Any Other Citizen That Includes Equal Protection From False Prosecution And The Right To A Fair Trial, The Right To Call Witnesses And To Present Evidence.

As A Citizen, But Also As A Defendant, I Am Legally Afforded All The Rights And Protection I Am Entitled To By Law- In This Case, Such Law Was Violated And There Was No Fair Trial And Sadly, I was Not Given The Opportunity To Call A VITAL WITNESS Or Present Evidence That Could Have Cleared The Defendant's From The Guilty Verdict. See Attach Court Transcripts. EXHIBIT "A"

Did you raise **GROUND ONE** in the California Supreme Court?

☒ Yes ☐ No.

(b) **GROUND TWO:** \_\_\_\_\_

**Supporting FACTS** (state *briefly* without citing cases or law): \_\_\_\_\_

Did you raise **GROUND TWO** in the California Supreme Court?

☐ Yes ☐ No.

(c) **GROUND THREE:** \_\_\_\_\_

Supporting **FACTS** (state *briefly* without citing cases or law): \_\_\_\_\_

Did you raise **GROUND THREE** in the California Supreme Court?

☐ Yes ☐ No.



(d) **GROUND FOUR:**

**Supporting FACTS** (state *briefly* without citing cases or law):

**Did you raise GROUND FOUR in the California Supreme Court?**

☐ Yes ☐ No.

23. Do you have any petition or appeal **now pending** in any court, either state or federal, pertaining to the judgment under attack?

☐ Yes ☒ No

24. If your answer to #23 is "Yes," give the following information:

(a) Name of Court: \_\_\_\_\_

(b) Case Number: \_\_\_\_\_

(c) Date action filed: \_\_\_\_\_

(d) Nature of proceeding: \_\_\_\_\_

(e) Grounds raised: \_\_\_\_\_

(f) Did you receive an evidentiary hearing on your petition, application or motion?

☐ Yes ☒ No

25. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing: Anthony Hernandez - S.B. NO. 128704  
233 "A" Street - Suite 500 - San Diego, CA. 92101

(b) At arraignment and plea: Anthony Hernandez - S.B. NO. 128704  
Plea: Not Guilty

(c) At trial: Anthony Hernandez - S.B. NO. 128704

(d) At sentencing: Anthony Hernandez - S.B. NO. 128704

(e) On appeal: Thomas Owen - S.B. NO. 217728 (619) 972-6936

(f) In any post-conviction proceeding: \_\_\_\_\_

(g) On appeal from any adverse ruling in a post-conviction proceeding: \_\_\_\_\_

26. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

☒ Yes ☐ No

3 counts 1. (Furnishing) 2. (Possession) 3. (Paraphernalia)

27. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

☐ Yes ☒ No

(a) If so, give name and location of court that imposed sentence to be served in the future:

(b) Give date and length of the future sentence:

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

☒ Yes ☐ No

28. Date you are mailing (or handing to a correctional officer) this Petition to this court: X

JUNE 5, 2008

Wherefore, Petitioner prays that the Court grant Petitioner relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
SIGNATURE OF ATTORNEY (IF ANY)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

June 3, 2008

(DATE)

Robbey Andersen

SIGNATURE OF PETITIONER

1 ROBBYE RAY ANDERSON  
2 I.D. NO. F39592  
3 C.R.C.  
4 P.O. BOX 3535  
5 NORCO, CA. 92860-0991  
6

7 UNITED STATES DISTRICT COURT  
8 CENTRAL DISTRICT OF CALIFORNIA  
9

10 ROBBYE RAY ANDERSON

CASE NO. SCD198047

11  
12 Petitioner,

13 V.

14 M. MARTEL, Warden, et.al.,

15 Respondents,  
16

PETITION FOR WRIT OF  
HABEAS CORPUS PURSUANT  
28 U.S.C. 2254, WITH  
MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT THEREOF.

17  
18  
19  
20 CASE SUMMARY  
21  
22  
23

24 An information was filed April 4, 2006, alleging that  
25 petitioner committed FURNISHING, GIVING AWAY NARC. TO  
26 AN OFFICER. POSS. OF NARC., and POSS. OF PARAPHERNALIA  
27 in violation of CA. Penal Code Section (11352A)  
28 (11351.5) and (11364).

## STATEMENT OF FACT

First of all, prior to the arrest, February of 2006, I was working graveyard at Switt's Fire Protection in San Diego, Ca. on Murphy Canyon Rd. Getting off work at six a.m., I decided to stop by a friend home in the Golden Hill area. Exiting my car, walking to an apartment complex, I became a victim of a strong-arm Robbery. I was brutally engaged with being beaten with a two-buy-four. I was hospitalized for three weeks at Scripps Mercy and Kaiser. Being heavily medicated, I made a poor choice to look around the downtown area for the suspect, which had not been found. In the process of walking by 6th & Street, Officer Chavez approach me and ask me if I had a 20 dollar rock of cocaine. Another poor choose of mine, I told him I did not sale cocaine because of past mistakes. My intentions were to take him to find some. We walked two blocks near 7th Broadway. There was a white male sitting in his Ford Explorer smoking something. I could not tell just what it was. I ask the guy which came to be Mr. Delbert Rose, did he have anything to sale this guy. He said no, which when officer Tagabond search his vehicle, she did not find anything but Marijuana, and cocaine residue on his console. I told officer Chavez that I had nothing and there was nothing around to get. As I was about to walk away, with officer Chavez standing right there, a black and white squad car which

1 to be Officer Wilson, pull up and detained me. I had  
2 no drugs on me. I did have \$116.00 on my possession  
3 from previous employment and a income tax return I  
4 had just recieved. I had bank statements from Bank  
5 Of America that was deaide from being presented by  
6 Mrs. Sonja Daniels Anderson during Trail. She was the  
7 only defense witness, but was never call to the witness  
8 stand. I was arrested also with Paraphernalia which  
9 I was guilty of from relapsing. Not until I got to the  
10 25th Imperial, Commercial Precint, I was told, my \$116.00  
11 was being confiscated because I was being charge for  
12 giving to an officer. Not sell, but giving, which was  
13 called furnishing, which was said a 0.07 of a gram  
14 of cocaine. However, there were only three officers  
15 at the scene, Officer Chavez, Officer Wilson, and  
16 Officer Tagabond, which she was the officer that  
17 apprehended the Ford Exployer. There were several  
18 Officers Testifying at Trail that was not at the scene.  
19 Not any of the officer Testified they saw nor heard  
20 anything over the transmitter of me giving officer  
21 Chavez anything. Also, there was no recording of such  
22 thing. Officer Tagabond arrested Delbett Rose for  
23 poss. of a small amount of cocaine Residue and crumbs  
24 that was said, it was found in a ciggerette pack in a  
25 trash bag on his back seat floor. Also, Marajauna and  
26 Paraphernalia. Charges were dismissed on Delbert Rose  
27 without me being aware and the City District Attorney  
28 Amy Maund prejudice the court and jury that anything

1 that was found in Delbert Rose vehicle, it was mine.  
2 Officer Chavez falsely fabricated that I had at  
3 one time, sat in Mr. Rose Vehicle and ask him to  
4 sit in and smoke because he had a crack cocaine  
5 smoking pipe. Officer Chavez also lied and  
6 fabricated in the report, at prelim., and also to  
7 the Trial court, that I showed him a baggy of  
8 approximately 3 to 4 grams of rock cocaine that never  
9 was found or existed.

### SUPPORTING FACTS

15 The San Diego Police Department charged Mr. Anderson  
16 with Furnishing, Giving Away Narc. To an officer, Poss  
17 of cocaine, and Poss. of Paraphernalia in violation of  
18 Penal Code Section (11352A), (11351.5), and (11364).  
19 (See attached Appendix section for Court Transcripts and  
20 Reporter Transcripts in support thereof).  
21 Before Trial began, it was brought to the Defense  
22 Attorney attention "Anthony Hernandez", that I had been  
23 a victim of a strong Arm Robbery and attempted to be  
24 murdered, which was verified thru Detective Adams  
25 "FEMALE" at the 25th Imperial-Commercial precinct.  
26 Attorney also recieved Hospital reports and records.  
27 After being arrested, I was under a second Surgery  
28 from a poor recovery from U.C.S.D, being sent from

1 GEORGE BAILY DETENTION FACILITY. THIS TOOK place  
2 during the months of May, June, and July. Petitioner  
3 was being heavily medicated and house in the County  
4 Jail Hospital Ward at the GEORGE BAILY FACILITY.  
5 GEORGE BAILY County Jail Medical Facility will pro-  
6 vide medical Records which will verify the Petitioner  
7 was being highly Medicated during Trial, which was  
8 feeling very much taking advantage of. Defense  
9 Attorney Anthony Hernandez presented all medical  
10 records to the court during sentencing hearing,  
11 which had no affect to the Petitioner already been  
12 Tried in Trial and convicted. The <sup>court</sup> fail to understand  
13 or did not want to understand, if the petitioner would  
14 have had that small amount of Narc, having  
15 paraphernalia, he would have use it hisself. Petitioner  
16 requested before trial thru Defense Attorney Anthony  
17 Hernandez for a retest of the Narc. and an investigation  
18 motion on Officer Chavez, "believing" if he framed me  
19 like this, he has done someone else. It was also  
20 denied by his Supervisor "Mrs. Mary Joe". Petitioner  
21 also requested Delbert Rose to be Subpoena to trial  
22 in the behalf of the defense to prove he was responsible  
23 for whatever was in his vehicle and also he may have  
24 been paying attention whether he seen me give any-  
25 thing to Officer Chavez or not. Defense Attorney  
26 Anthony Hernandez stated to Petitioner thru mail, he and  
27 his investigators found Mr. Delbert Rose but he would not  
28 corporate. The Petitioner request was for Delbert Rose



1 to be subpoena to Trail. Over the period of time  
2 of arrangement and Trail Hearing, Defense Attorney  
3 Anthony Hernandez stated, Mr. Delbert Rose could not  
4 be located anymore. This is a man the was arrested  
5 sitting in his vehicle at the same time as Petitioner.  
6 Because, the Trail court ask about Mr. Delbert Rose  
7 and his charges. Prosecutor Attorney Amy Maund  
8 and Defense Attorney Stated to the trail court, I  
9 DON'T KNOW YOUR HONOR, CONCERNING MR. ROSE  
10 where abouts, his charges, and his release. Once again,  
11 Petitioner had no narc. on his possession nor any type of  
12 exchange of prerecorded money. Office Chavez stated  
13 in the Prelim. and Trail Court, the Petitioner did not  
14 want his money and refused it. Even though Chavez  
15 tried to force money on Anderson, Anderson never  
16 excepted. Chavez claimed Anderson was not selling  
17 but just wanted to give him the 0.07 Gram of narc.  
18 At the begining of Trail, Mrs. Sonja Daniels Anderson  
19 was present to the court as a witness for the  
20 Petitioner. She was going to provide Employment  
21 verification, Tax Return verification, and dates and  
22 Bank Statements, which was around April 4, 2006, the  
23 day of the arrest. That would have showed the  
24 jury panel the Petitioner had every right to have \$116.00  
25 in his pocket, which what the court confiscated and  
26 use against the petitioner for evidence. Judge  
27 David Gill had and ordered the Petitioner's wife, "witness"  
28 to sit out of the Trail Courtroom during the Trail because

1 of she being a witness. As the Transcripts shows,  
2 she sat out during the entire trial waiting to take  
3 the stand. There were no reason at all to not bring  
4 her in as a witness to show the court statements  
5 and proof of employment. Defense Attorney Anthony  
6 Hernandez refuse to call her to the witness stand,  
7 even though Prosecutor Attorney Amy Maund and Judge  
8 David Gill, had the jurors to exit the panel and walk  
9 around the table to look at the EXHIBITS of the \$116.00,  
10 the 0.07 gram of Narc., and the paraphernalia.  
11 Please understand, during Trial, there were several  
12 officers call to the witness stand, there were only  
13 three of them at the scene, Officer Chavez, Officer  
14 Wilson, and Officer Tagabond. Petitioner refused  
15 to take the witness stand for himself because of his  
16 priors. As Petition explained to his Defense Attorney  
17 that he was being strongly medicated during Trial, it  
18 was not brought to the court attention and somehow the  
19 Defense Attorney slip in the suggestion to the court that  
20 most likely, the Petitioner would take the witness stand.  
21 Petitioner realized later after the trial had already  
22 preceeded, that the Public Defender Anthony Hernandez  
23 and the prosecutor Amy Maund were seemed to be  
24 working together. Petitioner admitted, January of 2000,  
25 he was very guilty of sales of a 20 dollar piece of Narc.  
26 to officer Dan Riese. Petitioner pleaded guilty and did  
27 the time. This April 4, 2006 case, is an officer saying  
28 the Petitioner just gave and not sell, also with no witnesses

1 to clarify the officer word. It came to be the officer  
2 word against the Petitioner's word.

3 Petitioner Trail Case was BLUNTLY unfair by the  
4 Judge David m. Gill giving the prosecutor Amy  
5 maund, to bring in Officer Dan Reise and putting  
6 him on the witness stand to tell and explain to  
7 the Jurors, when and how I sold cocaine to him  
8 in Janurary of the year 2000.

9 Also, the Court showed the Jurors the past  
10 photos of the 2000 case which was unfair to the  
11 Trail.

12 This PREJUDICIAL ERROR was plainly committed when  
13 the Trail court told the Jurors that the Petitioner  
14 had sold NARC. to a Police Officer in the year of  
15 January 2000.  
16  
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NORMAL LAW ABIDING PEOPLE  
GOVERNMENT AGENT  
UNWITTED PARTICIPANT  
ARE THE SAME PERSON

The purposes of the entrapment defense can be fulfilled only if it is understood that one can act as the agent of a law enforcement official without realizing the identity of his principal the unwitting agent though he does not know the true nature of his role. IS nonetheless being manipulated as the officer's tool in a plan to foster a crime and entrap its perpetrator. *Patty v. Board of Medical examiners* (1973) 9 cal 3d 356, 364

SUPPORTING FACTS

PRELIM, TRIAL, TRANSCRIPTS, AND Police Report states, Officer Chavez approached me as I was walking down the street minding my business and he continue to ask me for drugs to buy. Also, he even went to the extent to pull a crack cocaine smoking pipe out of the zipper of his pants. Chavez continued to ask me to take him to get some drugs. Anderson explain to Chavez, he did not have any drugs for sale. Anderson's intentions were to take Chavez to get some, but using better judgement, Anderson decided that would be the wrong thing to do. After walking with Chavez two block to 7th Street, Chavez continued to ask for a 20 Dollar Piece of

1 crack cocaine. Anderson decided to walk away  
2 after speaking with Delbert Rose thru the passenger  
3 window of his Ford Explorer, this is when Officer  
4 Wilson pulled up and detained Anderson.

### 5 6 7 8 9 10 MEDICAL RECORDS 11

12 medical Records is to show, At the time of the arrest,  
13 defendant was under Medical Care and Serious Medication.  
14 Documentations on Medical Page 18.

15 During the stay while incarcerated at George Bailly Fac.  
16 County Jail, Defendant went under a second Surgery  
17 at the UCSD HOSPITAL during the period of Court hearings.  
18 Defendant was unstable during trial, from being  
19 under strong medication and recovering head injuries.  
20 UCSD HOSPITAL CAN VERIFY THIS INFORMATION.

21 ALSO, DEFENDANT went under a third Surgery on  
22 3-22-07 at the Riverside Medical Center Hospital,  
23 from the California Rehabilitation Center, where I am  
24 incarcerated at this time. DOCUMENTED ON PAGE  
25 22.

26

27

28

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Scripps

TRAUMA SERVICES  
ADMITTING HISTORY AND PHYSICTRAUMA, DO 467-06  
99 0467 MR: 598120467  
MERCY Adm: 03/16/06  
M/48 01/01/1958  
YANG, JACK CHENG-YUAN M

3/16/06

## HISTORY

HISTORY COMPLAINT: Assault

HISTORY OF PRESENT ILLNESS: 48 ♂ assaulted in park. Unknown loc.

SUBJECT:

TIME CONSULTED:

SERVICE:

TIME RESPONDED:

V/C: YEAR, MAKE &amp; MODEL OF VEHICLE:

## PAST MEDICAL HISTORY

D.S.:

MED ILLS: HTN

ALLERGIES:

TETANUS STATUS: GIVEN

LAST MENSTRUAL PERIOD:

SURGS: ✓

## SOCIAL HISTORY

EMPLOYMENT:

SMOKE:

DRINK: ✓

DRUGS: ✓

## FAMILY HISTORY

FATHER:

MOTHER:

SIBLINGS:

FAMILY ILLS:

D.S.:

## PHYSICAL EXAM

P: 92

BP: 130/80

R:

T: 97

100%

CRAMS:

CHAMPION:

HEAD: Log @ scalp wound FACE: ⊕ S. line TPP

EYES: ⊕ PERRL 2-3 mm EARS: Blood @ ear

NOSE: ⊕ epistaxis

THROAT/MOUTH: ⊕ valv

NECK: ⊕ midline TPP

JAW: open fx

CHEST: NTP

LUNGS: CTA

HEART: Reg

ABDOMEN:

Soft

Post scalp - lg lacer



## GLASGOW COMA SCALE

Eye Opening	Spontaneous	4
	To Voice	3
	To Pain	2
	None	1
Verbal Response	Oriented	5
	Confused	4
	Inappropriate Words	3
	Incomprehensible Words	2
	None	1
Motor Response	Obeys Commands	6
	Localizes Pain	5
	Withdraw (pain)	4
	Flexion (pain)	3
	Extension (pain)	2
	None	1

## Preliminary Report

Corp MRN: 598120467  
Old MRN:

Patient: ANDERSON, Robbi  
Printed: 03/22/2006 07:34

0088

Page: 02

## CONDITION ON TRANSFER:

I have spoken to Dr. Ferrier of Kaiser Hospital who wishes to accept the patient in transfer and agrees that he is stable for same. We will, therefore, prepare the patient for transfer to Kaiser Hospital. His antibiotics may be able to be switched to p.o. in the eminent future and he will be able to be discharged (in our opinion) when he passes PT and is felt safe for home ambulation.

dictated by: SETH KROSNER, MD

SK:Spheris15706 C: 03/20/06 16:05  
D: 03/20/06 14:29 T: 03/20/06 16:05 DOCUMENT: 200603201564227800

Form: TRXLBLC



## Preliminary Report

0089

Scripps Mercy Hospital

## TRANSFER SUMMARY

PATIENT: ANDERSON, ROBERT

MR#: 000598120467

ACCT#: 000998120467

DATE OF ADMISSION: 03/16/2006

DATE OF TRANSFER: 03/20/2006

## ADMISSION DIAGNOSIS(ES):

Assault.

## HISTORY OF PRESENT ILLNESS:

This is a patient who was the victim of an assault allegedly with a pipe. He received numerous blows across the head and arrived in the trauma room awake and cooperative, but complaining of head pain and jaw pain. There were numerous lacerations measuring some 80 cm across the forehead and occiput. He also complained of pain at the jaw especially on the left.

## PAST MEDICAL HISTORY:

The patient denied major medical problems.

## MEDICATIONS:

He takes no medications.

## SOCIAL HISTORY:

He claims not to use alcohol. He is currently unemployed at the time of the interview. Tox screen showed cocaine.

## PHYSICAL EXAMINATION ON ARRIVAL:

VITAL SIGNS: Normal.

ENT: Multiple lacerations as noted above. There is facial tenderness on the left.

The remainder of the examination was unremarkable.

## HOSPITAL COURSE:

Workup included a CT of the head which revealed a bifrontal subarachnoid hemorrhage and significant skull fractures and pneumocephalus. The face showed left mandibular fracture. The remainder of the workup included C-spine, T-spine, L-spine, chest, abdomen, and pelvis CT's, all of which were negative, and plain films of both hands. The left hand showed a middle phalangeal fracture in the middle digit. The right hand was unremarkable.

The patient was taken to the operating room on March 17th for a repair of his mandible. This was accomplished without incident.

He also underwent repair and revision of scalp lacerations. His postoperative course was relatively unremarkable. PT felt that the patient was unsteady and had trouble with his gait because of the subarachnoid hemorrhage. They have recommended several days of acute physical therapy followed possibly by discharge. The patient is also still on IV clindamycin and levofloxacin for his jaw fracture. We will plan on adding Lortab elixir today and weaning off the parenteral narcotics.

Scripps Mercy Hospital

TRAUMA, D04, 16  
 998120467 MR: 598120467  
 MERCY Adm: 03/16/06  
 M/48 01/01/1958  
 YANG, JACK CHENG-YUAN M.

0093

## Trauma Resuscitation Flow Sheet

PATIENT INFORMATION

## ASSESSMENT

VITAL SIGNS						GLASGOW COMA SCALE		PAIN ASSESSMENT		Initial Temp:	Manual Blood Pressure:					
TIME	TEMP	PULSE	RESP	BP	O <sub>2</sub> SAT	FI <sub>O2</sub>	PUPILS				EYE	VERBAL	MOTOR	TOTAL	Pain 1-10	NURSE'S NOTES
							S	R	S	R						
1618		97	14	100	100	RA	3	+	3	+	3	5	6	14	*	onto gurney, surveys in progress
1623		96	16	100	98	RA					3	5	6	14	*	
1630	97.2	92	20	100	100	RA									*	R hand wound irrigated
1632		94	16	100	96	RA									*	6 bandaged. Rolled.
1637		95	18	100	98	RA					4	4	6	14	*	Extensive scalp lac -
1642		97	16	100	95	RA					4	4	6	14	*	explored briefly & -
1647		100	16	100	100	NRB					4	4	6	14	*	bandaged. Bleeding
1652		96	16	100	100	NRB					4	4	6	14	*	controlled.
1700		94	18	100	100	NRB					4	4	6	14	*	To CT & TNL on
1705		96	16	100	100	NRB					4	4	6	14	*	monitor. O2 NRB
1710		94	18	100	100	NRB					4	4	6	14	*	applied, prevented
1715		90	16	100	100	NRB					4	4	6	14	*	CT's in progress.
1720		88	16	100	100	NRB					4	4	6	14	*	Creatinine 1.3. Non-contrast
1725		86	16	100	100	NRB					4	4	6	14	*	per Dr. Yang. CT's cont.
1730		84	16	100	100	NRB					4	4	6	14	*	⊕ skull Rx. Report
1735		90	18	100	100	NRB					4	4	6	14	*	called to Linda RN.
1740		83	16	100	100	NRB					4	4	6	14	*	CT's cleared per Dr.
1745		85	16	100	100	NRB					4	4	6	14	*	Yang. To X-ray for
1805		84	16	100	100	NRB					4	4	6	14	*	plate films.

Left E.D.: 1700 Time: To: ☐ X-Ray ☒ C.T. ☐ O.R. ☐ Other:Valuables: ☒ Safe ☐ Family ☐ With Patient

Returned To E.D.: Time: Reason:

Pronounced: By: NA Time:

Admitted: Time: ☐ ICU ☒ SICU ☐ Other: LindaNotification: Coroner: ☐ Yes ☒ No Time:Discharged: Time: ☐ Home ☐ Other:Police: ☐ Yes ☒ No Time:

Relative Notified, Name: 4821

Release To Coroner: ☐ Yes ☒ No Time:

Relationship:

Total Time in ED: Hr.: Min.:

Phone No.:

At:

Signature: RN

## Preliminary Report

15  
0095

Scripps Mercy Hospital

## EMERGENCY RECORD

PATIENT: TRAUMA , D0467-06

MR#: 000598120467

ACCT#: 000998120467

DATE OF SERVICE: 03/16/2006

TRAUMA D: 0467

## TIME SEEN:

3/16/06, approximately 1630.

## CHIEF COMPLAINT:

This is a 48-year-old male who comes in as a co-trauma. Patient was assaulted by an unknown assailant. He was beaten multiple times with unknown objects. He sustained primarily head trauma and had positive LOC. Complaints of headache, neck pain. Denies chest pain or abdominal pain or lower back pain. Denies weakness or sensory disturbances.

## PAST MEDICAL HISTORY:

Patient denies any medical problems.

## MEDICATIONS:

Denies any medicines.

## ALLERGIES:

DENIES ANY ALLERGIES.

## SOCIAL HISTORY:

States that he is homeless.

## FAMILY HISTORY:

No history of significant illness.

## REVIEW OF SYSTEMS:

A full 10-system review of systems was done on this patient and was negative except for those components stated in the history of present illness.

## PHYSICAL EXAMINATION:

VITAL SIGNS: 130/80, 94, 12, 100% on room air. Vital signs interpreted by myself as being within normal limits.

HEENT: This patient has a GCS of 14. E3, V5, Motor 6. He has evidence of a large laceration to the right parietal area, it is approximately 10 cm in size. Blood within the canal, but no obvious evidence of hemotympanum. Pupils equal, round, and reactive to light. The trachea is midline. No obvious facial fractures.

CHEST: Clear bilaterally.

HEART: Regular rate without murmur.

ABDOMEN: Soft. No tenderness to palpation, no rebound, no guarding. Pelvis stable to rock and compression.

EXTREMITIES: With evidence of tenderness to palpation and

## Preliminary Report

Corp MRN: 598120467  
Old MRN:

Patient: ANDERSON, Robbi  
Printed: 03/22/2006 07:33

0096

Page: 02

swelling about the right hand, with some scattered lacerations.  
No other obvious fractures in the extremities. There are 2+  
pulses, radial, femoral, symmetric and equal.

## PROCEDURES:

The patient had two procedures done. The first was an airway assessment. The airway was assessed by myself, found to be medically stable. Did not need intervention at the moment. The patient appeared to be oxygenating and ventilating appropriately, and had a GCS of greater than 8 with head trauma.

The second procedure was a FAST examination. The patient had a four-view FAST examination performed by the resident, Dr. Goodwin, under my direct supervision. No evidence of free fluid within the peritoneum nor the pericardial space.

## IMPRESSION:

This patient is status post assault, head trauma, rule out closed head injury. Head laceration, 10 cm. Right hand laceration/  
Right hand contusion.

Patient will be admitted to Dr. Jack Yang of the trauma service.  
Further evaluation, management, and care per Dr. Yang at the trauma service.

DICTATED BY: JON K LUDWIG, MD

JKL:Spheris13305 C: 03/17/06 05:18  
D: 03/16/06 16:30 T: 03/17/06 05:12 DOCUMENT: 200603171563219200

Form: TRXLBLC

0099

17

**Final Report**

Corp MRN: 598120467  
Old MRN:

Patient: ANDERSON, Robbi  
Printed: 03/28/2006 19:54

Page: 02

buttocks.

**ASSESSMENT:**

Closed head injury, likely jaw fracture. Possible neck strain.  
Possible blunt torso injury.

**PLAN:**

Plan is for CT scans of the head, cervical spine, chest, abdomen, and pelvis, as well as CT scans of the jaw.

**ADDENDUM:**

The patient had obvious skull fracture with possible small subarachnoid blood on the CT of the brain and skull. He does have a comminuted left jaw fracture. Dr. Ott was alerted to the skull fracture and asked us to close the lacerations and that will be dictated separately. Dr. Vecchione was contacted and will address this jaw fracture likely tonight because of the likelihood that it is an open fracture. The patient is placed on Levaquin and clindamycin and IV fluids. He is made NPO.

Dictated By: JACK YANG, MD

JY:Spheris14552 C: 03/17/06 05:38

D: 03/16/06 19:40 T: 03/17/06 05:38 DOCUMENT: 200603171563270500

SIGNED ELECTRONICALLY 03/17/2006 07:28

By: 372433 YANG, JACK C

Form: TRXLBLC

0101



Dictating Physician: Ames D Ressa, MD

Patient Name: ANDERSON, ROBBYE R

Med Rec No: 0000000017107871

Date of Admission: 03/20/2006

Date of Discharge: 03/22/2006

## DISCHARGE SUMMARY

### HOSPITAL COURSE:

The patient was admitted and placed in a regular surgical bed. He was noted to be alert and oriented. He had healing scalp lacerations. There was no evidence of chest or abdominal trauma. His left hand was in a splint. There were staples throughout the scalp. Consultations were obtained from neurosurgery, head and neck surgery, orthopaedics, physical therapy, and occupational therapy. The patient was noted to be stable. His significant closed head injuries included a nondisplaced parietal/occipital skull fracture with bilateral frontal subarachnoid hemorrhage, and left parietal pneumocephalus. No further neurological imaging was felt necessary. The skin clips and sutures in the scalp were removed and he is to follow up with neurosurgery as needed. Neurologic exam was nonfocal. The patient's mandible fracture was stable, and his finger fracture was also stable. Physical therapy, and occupational therapy evaluations were completed. The patient was felt okay for discharge to his home. He was discharged home on the third hospital day to be followed up in outpatient clinics.

### DISCHARGE INSTRUCTIONS:

Included a puree diet because of the fixation of his jaw. He is allowed to shower. He is not supposed to actively wash his scalp. He is to follow up with head and neck surgery in approximately two weeks. Follow up with Dr. Hempton in the Orthopaedic Clinic in approximately four weeks, and he is to undergo occupational therapy as an outpatient. He was given a prescription for Vicodin for pain #50 with no refill. He does not require any followup in this General Surgery Clinic.

Ames D Ressa, MD

ADR:EDIX13704

D:03/22/2006 @14:13 T:03/22/2006@16:11 DOCUMENT:200603221903953300

## DISCHARGE SUMMARY

Kaiser San Diego UNSIGNED CLINIC  
COPY

Page 2 of 2

This is not an official document unless signed by a physician

4647 Zion Avenue • San Diego • California 92120 • Telephone (619)528-5000



STATE OF CALIFORNIA  
 SUPPLEMENTAL TO DENTAL PROGRESS NOTES  
 CDCR 237-C-1 (Rev. 04/06)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Page 1 of 2

Prior to each treatment, the Dentist *must* review the inmate-patient's health history, note changes or specify no change, and use S.O.A.P.E. format when applicable.

DATE OF ACTION (month/day/year)			TOOTH NUMBER	PROGRESS NOTES (include signature at the end of each data entry)	PRIORITY AFTER VISIT	PRISON LOCATION (ACRONYM)
01	18	07		UCSD examined again and said they will retreat in July - August 2006.		
				Around September patient was moved to DONOVAN facility. UCSD did not retreat. At DONOVAN facility pt. was examined by oral surgeon with complete records. Pt. was told that they will perform surgery if treat fractured mandible at ALVARADO HOSPITAL, SAN DIEGO.		
				Patient was sent to CRC around Jan 16 <sup>th</sup> 2007.		
				OBJECTIVE FINDINGS:		
				Intra & Extra oral Exam.		
				E.O.: Step deformity with tenderness lower border of mandible on left.		
				I.O.: Missing teeth 1, 2, 3, 4, 5, 10, 13		
				14, 15, 16, 17, 23, 24, 25, 26, 29, 30		
				CONT		

②①③

DRUG ALLERGIES?

☒ NO☐ YES

SUPPLEMENT TO DENTAL PROGRESS  
 NOTES

NAME (LAST, FIRST, MI), CDCR NUMBER, AND DATE OF BIRTH

ANDERSON, ROBBYE R

F 39592

11-21-57

STATE OF CALIFORNIA  
 SUPPLEMENTAL TO DENTAL PROGRESS NOTES  
 CDCR 237-C-1 (Rev. 04/06)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Page 1 of 2

Prior to each treatment, the Dentist *must* review the inmate-patient's health history, note changes or specify no change, and use S.O.A.P.E. format when applicable.

DATE OF ACTION (month/day/year)			TOOTH NUMBER	PROGRESS NOTES (include signature at the end of each data entry)	PRIORITY AFTER VISIT	PRISON LOCATION (ACRONYM)
01	18	07		S: "Broken jaw, not fixed since last year, extreme pain"		
				H/O illness as stated by patient:		
				Pt. was assaulted around Feb. 2006		
				in San Diego area when he was a		
				private citizen. He sustained jaw		
				fracture on left body of mandible.		
				He was treated at Scripps mercy		
				hospital with wiring of fractured		
				segments. Pt. did not follow instructions		
				and did not rest the immobilized jaw		
				which resulted in complications i.e.,		
				unhealed jaw.		
				In April 2006 pt. was arrested &		
				sent to county jail. He was sent		
				to UCSD to treat fractured-non healed		
				mandible. UCSD performed surgery		
				in May 2006 with metal plates. Pt.		
				says the metal plates were too big		
				and fracture did not heal properly <u>cont'd</u>		

① ② ③

DRUG ALLERGIES?

☒ NO☐ YES

SUPPLEMENT TO DENTAL PROGRESS  
 NOTES

NAME (LAST, FIRST, MI), CDCR NUMBER, AND DATE OF BIRTH

ANDERSON, ROBBY R

F 39592

11-21-57



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NOTE: SEND COPY OF PHYSICIAN'S ORDER FOR MEDICATION  
TO PHARMACY AFTER EACH ORDER IS SIGNED.

Order Date	Time	Problem #	Physician's Order and Medication (Orders must be dated, timed, and signed.)
3/9/07			- NPO p.m. daylight 3/20/07.
8:00			- New DOS 3/21/07 (referral made and)
			2/11/07, MD
			T-R
3/9/07			
3/21/07	1445		- Admit to OPHU
			- Soft diet x 2 wks.
			- Keflex 500mg P.O. QID x 7 days.
			- Vicodin 5/500 i tab P.O. Q6° PRN Pain xnday
			- Peridex 15cc P.O. swish & spit BID x 7 WK.
			T.O. Dr. Do/Chgmr
			24 <sup>th</sup> Audit Complete 3-22-07/0030 R. Anderson

ALLERGIES:

NKA.

INSTITUTION

CRC

ROOM/AVG

OPHU - #3

CDC NUMBER, NAME (LAST, FIRST, MI)

Confidential  
client information  
See W & I Code, Sections 4514 and  
5328

Anderson, R  
F 39592

PHYSICIAN'S ORDERS

22

STATE OF CALIFORNIA  
SUPPLEMENTAL TO DENTAL PROGRESS NOTES  
CDCR 237-C-1 (Rev. 04/06)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Page 1 of 2

Prior to each treatment, the Dentist *must* review the inmate-patient's health history, note changes or specify no change, and use S.O.A.P.E. format when applicable.

DATE OF ACTION (month/day/year)			TOOTH NUMBER	PROGRESS NOTES (include signature at the end of each data entry)	PRIORITY AFTER VISIT	PRISON LOCATION (ACRONYM)
3	22	07		0845 visit at Bed #9 OPMU. Per pt report (1) He first broke (LT) mandible Feb 2006 when he was not in custody & had surgery (2) Had 2nd surgery while at George Bailey Jail in San Diego May 8, 2006 where - per pt report - (LT) side of chin was numb after surgery to place plate (3) on 3/21/07 had 3rd surgery - to remove plate (LT) side mandible Pt says he is OK, though numb, (LT) side and does not want any more oral surgery to repair (LT) side of mandible		

DRUG ALLERGIES?

☒ NO☐ YES

NAME (LAST, FIRST, MI), CDCR NUMBER, AND DATE OF BIRTH

Anderson, Robby R

F 39592

11/21/57

SUPPLEMENT TO DENTAL PROGRESS  
NOTES

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**COURT OF APPEAL, FOURTH APPELLATE DISTRICT**

**DIVISION ONE**

**STATE OF CALIFORNIA**

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBBYE R. ANDERSON,

Defendant and Appellant.

D049483

(Super. Ct. No. SCD198047)

FILED  
Stephen M. Kelly, Clerk  
DEC - 5 2007  
Court of Appeal Fourth District

APPEAL from a judgment of the Superior Court of San Diego County, David M. Gill, Judge. Affirmed.

Robbye Anderson appeals from a judgment convicting him of furnishing, giving away or offering to sell cocaine base; possession of cocaine base for sale; and possession of paraphernalia used for narcotics. He contends the trial court erred in (1) admitting evidence of a prior offense, and (2) allowing the prosecution to reopen its case to admit booking photographs from the prior offense. We find no error and affirm the judgment.

*Original*

Court of Appeal, Fourth Appellate District, Div. 1 - No. D049483  
**S159550**

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

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THE PEOPLE, Plaintiff and Respondent,

v.

ROBBYE R. ANDERSON, Defendant and Appellant.

---

The petition for review is denied.

GEORGE  
Chief Justice

Filed: February 13, 2008

0077

## EXHIBIT A

Exhibit (A)

IN RE: [illegible]

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

Exhibit A

THE PEOPLE OF THE STATE OF  
CALIFORNIA,

Plaintiff and Respondent,

v.

ROBBYE RAY ANDERSON,

Defendant and Appellant.

)  
) APPELLATE COURT NO.  
) D049483  
)  
) SUPERIOR COURT NO.  
) SCD198047  
)  
)  
)  
)  
)  
)

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF  
CALIFORNIA FOR THE COUNTY OF SAN DIEGO

Honorable David M. Gill, Judge

### INTRODUCTION

Respondent argues that the trial court properly admitted the evidence of Mr. Anderson's previous crime, and even if the trial court erred, the error was not prejudicial. Respondent is wrong. The trial court erred under Evidence Code section 352 because the past crime evidence

was highly prejudicial given its identical nature to the current crime, and was of little probative value because Mr. Anderson was willing to stipulate that if he possessed cocaine at all, it was for sale.

## **ARGUMENT**

### **I.**

**THE TRIAL COURT DEPRIVED MR. ANDERSON OF A FAIR TRIAL AND DUE PROCESS OF LAW UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION WHEN THE COURT ALLOWED THE PROSECUTOR TO INTRODUCE EVIDENCE OF MR. ANDERSON'S PREVIOUS CONVICTION FOR SELLING COCAINE.**

#### **A. THE ERROR.**

Respondent argues that the prior offense was relevant to Mr. Anderson's intent to sell. (R.B. p. 8.)<sup>1</sup> As set forth in the opening brief, however, relevancy was not the issue. The issue was prejudicial effect relative to probative value. Admission of the 2000 conviction was improper because its probative value was limited and substantially outweighed by its prejudicial effect. In the context of this case, there was no debate as to Mr. Anderson's intent. Mr. Anderson did not raise a "possession for personal use" defense and agreed to stipulate that he would

---

<sup>1</sup> Respondent's brief is abbreviated as "R.B."



not raise it. (Vol. 2 R.T pp. 35, 53.)<sup>2</sup> Because Mr. Anderson was disputing possession itself and not making a possession for personal use defense, Mr. Anderson was willing to further stipulate that if the jury believed that Mr. Anderson possessed cocaine (i.e., that Officer Chavez was telling the truth), then that cocaine was for sale. (Vol. 2 R.T pp. 35, 53.) Because intent was not an issue, the probative value of the past crime had little weight.

Respondent argues that the past crime also showed a “common plan.” (R.B. p. 5.) According to respondent, the common plan was that Mr. Anderson possessed cocaine once in 2000, and therefore possessed it for purposes of the current crime. In so arguing, respondent does not address the holding of *Old Chief v. United States* (1997) 519 U.S. 172 [117 S.Ct. 644, 136 L.Ed.2d 574], discussed at length in Mr. Anderson’s opening brief, that prejudice is especially obvious when the past crime is similar to the current crime. (*Id.* at pp. 180, 184.) Rather than address this point, respondent spends several pages in its brief detailing the similarities between the crimes. (R.B. pp. 8-10.)

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<sup>2</sup> The Clerk’s Transcript is abbreviated as “C.T.,” and the Reporter’s Transcript is abbreviated as “R.T.”

Respondent also fails to address the slim probative value in light of the proffered stipulation. Instead, respondent states in a footnote, without citation, that the prosecution was under no obligation to accept the stipulation. (R.B. p. 8.) As set forth in the opening brief, however, the United States Supreme Court made clear in *Old Chief, supra*, 519 U.S. at p. 174 that in conducting the Evidence Code section 352 analysis, the court should consider the defendant's willingness to stipulate.

By failing to address *Old Chief*, respondent misses other important arguments. First, respondent does not address the fact that *Old Chief* made clear that unfair prejudice does not necessarily mean a past crime with an emotional charge. (*Old Chief, supra*, 519 U.S. at p. 180, emphasis added.) Whereas, in the present case, the trial court erred by considering prejudice only under the limited light of inflaming emotions: "I don't think it's the kind of crime that is going to unduly inflame the passions of the jury..." (Vol. 2 R.T. pp. 32-33, 56.)

Finally, respondent does not address the fact, discussed at length in the opening brief, that the prosecution and court compounded the prejudicial effect of the 2000 crime by reopening the case so as to introduce the booking photo of Mr. Anderson from 2000. (Vol. 3 R.T. p. 237.) In effect, reopening the case put an undue emphasis on the 2000

crime. Because of the uniquely harmful aspects of past crime evidence, it has been held that overemphasis of the evidence can constitute reversible error even when the evidence has been admitted for a proper purpose. (*United States v. Vargas* (7th Cir. 1978) 583 F.2d 380, 387.) Accordingly, even if this court agrees with respondent that the evidence was properly admitted, this court should reverse the conviction due to the trial court's overemphasis of the past crime.

**B. THE PREJUDICE.**

Respondent argues that even if there was an error, such an error was harmless under *People v. Watson* (1956) 46 Cal.2d 818. Respondent is wrong in two respects. First, the proper standard to be applied is the reversible error test set out in *Chapman v. California* (1967) 386 U.S. 18 [87 S.Ct. 824, 17 L.Ed.2d 705]. Second, even under the *Watson* standard, this court should reverse.

As set forth in the opening brief, the trial court error not only constituted a violation of state evidence law, but also constituted one of constitutional dimension. The court's error denied Mr. Anderson his right to a fair trial because the evidentiary error so infused the trial with unfairness as to deny due process of law. (See *McKinney v. Rees* (9th Cir. 1993) 993 F.2d 1378, holding that character evidence of propensity –

defendant's possession of and fascination with knives – did not support any permissible inference relevant to defendant's prosecution for the stabbing-murder of his mother, and violated due process; see also, *Estelle v. McGuire* (1991) 502 U.S. 62, 75 [112 S.Ct. 475, 116 L.Ed.2d 385], *Terrovona v. Kincheloe* (9th Cir. 1988) 852 F.2d 424, 428-429, and *Bryson v. State of Alabama* (5th Cir. 1981) 634 F.2d 862.) Because this error is of federal as well as state constitutional dimension, violating as it does Mr. Anderson's Sixth and Fourteenth Amendment rights, the court must apply the reversible error test set out in *Chapman v. California, supra*, 386 U.S. 18.

Nonetheless, no matter what standard is applied, looking at the evidence to evaluate its possible injurious effect on Mr. Anderson's case leads to the conclusion that it contributed to the conviction. The evidence against Mr. Anderson was far from overwhelming. The only person to have seen the alleged three grams of cocaine base was Officer Chavez. That cocaine was never found. Officer Chavez was subsequently moved from undercover work back to patrol duty. This case boiled down to believability. Officer Chavez was proven to have credibility problems when his testimony at trial contradicted his testimony at the preliminary — hearing. Had the jury not seen and heard the other offense evidence, it was

reasonably probable appellant would have been acquitted. (*People v. Malone* (1988) 47 Cal.3d 1, 22; *People v. Watson* (1956) 46 Cal.2d 818, 836.) The jury likely would have believed Mr. Anderson's version of events had the jury not learned that Mr. Anderson was arrested in 2000 for the same crime. The 2000 crime played "a dominant part of the evidence against the accused" and was "both highly prejudicial and minimally relevant to any legitimate purpose." (*People v. Collie* (1981) 30 Cal.3d 43, 64.) Therefore, respondent cannot meet its burden to prove its improper admission was harmless under *Chapman*.

Moreover, Mr. Anderson would prevail even if the *Watson* standard were applied because it was reasonably probable that a result more favorable to Mr. Anderson would have been reached in the absence of the error. (*People v. Watson, supra*, 46 Cal.2d 818.) Because the evidentiary error made it clear to the jury that Mr. Anderson was a repeat cocaine dealer, the evidentiary error deprived Mr. Anderson of the opportunity to effectively argue he did not sell cocaine base here. In the absence of that error, there was a reasonable chance that the outcome of the case would have been different (*i.e.*, Mr. Anderson would have not been disbelieved and found guilty).

## CONCLUSION

As set forth in Mr. Anderson's opening brief and above, reversal is warranted because the trial court erred under Evidence Code section 352 by improperly allowing the introduction of Mr. Anderson's previous conviction for selling cocaine. In so doing, the court deprived Mr. Anderson of his Sixth and Fourteenth Amendment rights to due process and a fair trial.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Tom Owen', is written over a horizontal line.

Thomas Owen  
Attorney for Appellant

Dated: July 13, 2007

1 IN THE UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF CALIFORNIA

3  
4  
5 ROBBYE RAY ANDERSON,  
6 PETITIONER

7  
8 V.

9  
10  
11 RESPONDENT  
12 and  
13 THE PEOPLE OF THE STATE  
OF CALIFORNIA.

SUPREME COURT NO.  
S159550

APPELLATE COURT NO.  
D049483

SUPERIOR COURT NO.  
SCD198047

14  
15 APPEAL FROM THE FOURTH DISTRICT  
16 COURT OF APPEAL DIVISION ONE OF  
17 THE STATE OF CALIFORNIA, ALSO  
18 THE SUPREME COURT OF THE STATE  
19 OF CALIFORNIA.

20 INTRODUCTION

21  
22 Appellant appealed a Judgement of the superior  
23 court of San Diego county, David M. Gill, Judge before  
24 the Fourth District court of appeal. Appellant was convicted  
25 for FURNISHING, GIVING AWAY or OFFERING TO SELL COCAINE  
26 BASE; (2) POSSESSION OF COCAINE BASE FOR SALE; (3) and  
27 POSSESSION OF PARAPHERNALIA. The Judgement by the  
28 lower court and the Supreme Court was DENIED.



## ISSUES

The Trial Court erred in admitting evidence of a prior offense and by allowing the Prosecution to reopen its case to admit booking photographs from the Prior Offense.

Respondent argues that the Trial Court properly admitted the evidence of Appellant's previous crime, and if the Trial Court erred, the error was not PREJUDICIAL. Respondent is wrong. The Trial Court erred under Evidence Code section 352 because the past crime evidence was highly prejudicial given its identical nature to the current crime, and was of little probative value because Appellant was willing to stipulate that if he possessed cocaine at all, it was for sale.

The Trial Court deprived Petitioner of a Fair Trial and Due Process of Law under the Sixth and Fourteenth Amendments to the United States Constitution when the Court allowed the Prosecutor to introduce evidence of the Appellant's previous conviction for selling cocaine.

## 1 A. THE ERROR

2 Respondent argued that the prior offense was  
3 relevant to Appellant's intent to sell, (R.B.P. 8) as set  
4 fourth in the Appellant's opening brief, however, relevancy  
5 was not the issue. The issue was prejudicial effect  
6 relative to probative value. Admission of the 2000  
7 conviction was improper because its probative value  
8 was limited and substantially outweighed by its  
9 prejudicial effect.

10 Respondent argues that the past crime also  
11 showed "common plan." (R.B.P. 5.) According to  
12 Respondent, the common plan was that the Appellant  
13 possessed cocaine once in 2000, and therefore  
14 possessed it for purposes of the current crime.  
15 In so arguing, Respondent does not address the holding  
16 of OLD CHIEF v. UNITED STATES (1997) 519 U.S. 172 [117 U.S.  
17 CT. 644, 136 L. Ed. 2d 574], discussed at length on  
18 Appellant's opening brief, that prejudice is especially  
19 obvious when the past crime is similar to the current  
20 crime. (Id. at pp. 180, 184. Rather than address this point,  
21 Respondent exhausted several pages in its brief  
22 detailing the similarities between the crimes. (R.B.P. 8-10.)  
23 By failing to address Old Chief, Respondent misses other  
24 important arguments. First, Respondent does address the  
25 fact that Old Chief made that unfair prejudice does not  
26 necessarily mean a past crime with an emotional charge  
27 (Old Chief, supra, 519 U.S. at p. 180, emphasis added.) Where  
28 as, in the present case, the Trial Court erred by considering

1 prejudice only under the limited light of inflaming  
2 emotions. "I don't think it's the kind of crime that  
3 is going to unduly inflame the passions of the Jury."  
4 (Vol. 2 R.T. PP. 32-33, 56.)

#### 6 REQUEST FOR JUDICIAL NOTICE

7 Because of the uniquely harmful aspects of the  
8 past crime evidence, it has been held that overemphasis  
9 of the evidence can constitute reversible error when  
10 the evidence has also been admitted for a proper  
11 purpose. (United States v. Vargas (7th Cir. 1978) 583 F.2d  
12 380, 387.) Although the 4th District Court of Appeal  
13 Division One agreed with Respondent in the instant case,  
14 this Court should reverse the conviction due to the  
15 Trial Court's overemphasis of the past crime.

#### 16 THE PREJUDICE

17 Respondent argued that even if there was an  
18 error, such an error was harmless under people v.  
19 Watson (1956) 46 Cal. 2d 818. Respondent is wrong  
20 in two respects. First, the proper standard to be  
21 applied is the reversible error test set out in Chapman  
22 v. California (1967) 386 U.S. 18 [87 S.Ct. 824, 17 L.Ed 2d.  
23 705]. Second, even under the Watson Standard, this  
24 court should reverse.

## DENIAL OF DUE PROCESS

As set forth in the opening brief, the Trial court error not only constituted a violation of state evidence law, but also constituted one of Constitutional dimension. The court's error denied Appellant his right to a fair Trial because the evidentiary error so infused as the Trial Court was unfair as to deny the Petitioner his Due Process of law. (SEE McKinney v. Rees (9th Cir. 993) 993 F.2d 1378, withholding vital character evidence of propensity with defendant's possession of and fascination with knives which did not support any permissible inference relevant to defendant's prosecution for the stabbing and murder of his mother, and violated due process; See also, Estelle v. McGuire (1991) 502 U.S. 62, 75 [112 S.Ct. 475 116 L.Ed.2d 385], Terrovona v. Kincheloe (9th Cir. 1988) 852 F.2d 424, 428-429, and Bryson v. State of Alabama 5th Cir. 1981) 634 F.2d 862.) Because this error is of Federal Statute as well as state Statute Constitutional dimension has been violated under the Due Process and Equal Amendment Rights.) The Court must apply the reversible error test out in Chapman v. California, Supra 386 U.S. 18.

The effect on the Appellant's case leads to the conclusion that it contributed to the conviction. The evidence against the Appellant was far from overwhelming. The only person to have seen the alleged three grams of cocaine base was Officer Chavez. That cocaine was never found.

## CREDIBILITY

Officer Chavez was proven to have credibility problems when his testimony at Trial contradicted his testimony at the Preliminary Hearing. Had the Jury not seen and heard the other offense evidence of the 2000 case, it was more reasonably probable the appellant would have been acquitted. *People v. Malone* (1988) 47 Cal. 3d 1, 22; *People v. Watson* (1956) 46 Cal. 2d 818, 836.) The Jury likely would have believed the Appellant's version of events had the Jury not learned that the Appellant was arrested in 2000 for the "what considered as a similar crime. The 2000 case was Sales. The 2006 current case is Furnishing, giving away. The 2000 crime played "a dominant part of the evidence against the accused" and was "both highly prejudicial and minimally relevant to any legitimate purpose." (*People v. Collic* (1981) 30 Cal. 3d 43, 64.) Therefore, Respondent cannot meet its burden to prove its improper admission was harmless under Chapman. Moreover, Appellant would prevail even if the Watson standard were applied because it was reasonably probable that a result more favorable to Appellant would have been reached in the absence of the error. (*People v. Watson*, supra, 46 Cal. 2d 818.) Because the evidentiary error made it clear to the Jury that Appellant was a repeated cocaine dealer, the evidentiary error deprived Appellant of the opportunity to effectively argue he did not sell or give away, cocaine base here.

PETITIONER PRAYER FOR RELIEF

Petitioner prays for the following relief by the U.S. District Court.

I. That the District Court review petitioner's case.

II. Reverse the 4th District Court of Appeals findings.

III. Remand for Retrial in the U.S. District Court or Hearing before this court.

IV. Review the amount of Sentence and Reduce the 10 yrs.

V. That petitioner is brought before the District Court in regards to this petition.

June 3, 2008

Dated On

ROBBYE RAY ANDERSON  
PRINTED NAME

Robbye Anderson  
SIGNATURE OF PETITIONER

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

DEPARTMENT 28

HON. DAVID M. GILL, JUDGE

THE PEOPLE OF THE STATE OF  
CALIFORNIA,

PLAINTIFF,

-VERSUS -

ROBBYE R. ANDERSON,

DEFENDANT.

CASE NO. SCD198047

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
SAN DIEGO, CALIFORNIA

JULY 24, 2006

APPEARANCES:

FOR THE PLAINTIFF:

OFFICE OF THE DISTRICT ATTORNEY  
BY: AMY MAUND, ESQ.  
DEPUTY DISTRICT ATTORNEY  
330 WEST BROADWAY  
SAN DIEGO, CA 92101

FOR THE DEFENDANT:

OFFICE OF THE PUBLIC DEFENDER  
BY: ANTHONY HERNANDEZ  
233 UNION STREET  
SAN DIEGO, CA 92101

OPHELIA CHAVEZ CORREA, CSR #2326  
OFFICIAL COURT REPORTER  
SAN DIEGO COUNTY COURTHOUSE  
220 WEST BROADWAY  
SAN DIEGO, CA 92101



1 STATE OF CALIFORNIA )  
2 ) SS:  
3 COUNTY OF SAN DIEGO )  
4  
5  
6

7 I, LORI RILLING, CERTIFIED SHORTHAND REPORTER,  
8 CERTIFICATE NO. 9460, AN OFFICIAL SHORTHAND REPORTER, IN AND  
9 FOR THE COUNTY OF SAN DIEGO, FOR THE STATE OF CALIFORNIA, DO  
10 HEREBY CERTIFY THAT I REPORTED IN MACHINE SHORTHAND THE  
11 PROCEEDINGS IN THE WITHIN CASE, AND THAT THE FOREGOING  
12 TRANSCRIPT, CONSISTING OF PAGES NUMBERED FROM 1 TO 10, IS A  
13 TRUE AND CORRECT COMPLETE TRANSCRIPT OF THE PROCEEDINGS IN THIS  
14 CASE.

15 DATED AT SAN DIEGO, CALIFORNIA ON THIS 21ST DAY OF  
16 APRIL, 2006.  
17  
18  
19  
20  
21

22   
23 LORI RILLING, CSR #9460 --  
24 OFFICIAL COURT REPORTER  
25  
26  
27  
28

STATE OF CALIFORNIA            )  
                                      :       SS:  
COUNTY OF SAN DIEGO         )

I, ROBERT F. STARK, CSR, CERTIFICATE NUMBER 5104, AN  
OFFICIAL REPORTER OF THE SUPERIOR COURT OF THE STATE OF  
CALIFORNIA, IN AND FOR THE COUNTY OF SAN DIEGO, HEREBY CERTIFY  
THAT I REPORTED IN MACHINE SHORTHAND THE PROCEEDINGS IN THE  
WITHIN CASE, AND THAT THE FOREGOING TRANSCRIPT, CONSISTING OF  
PAGES NUMBERED FROM ~~410~~ INCLUSIVE, IS A FULL, TRUE,  
AND CORRECT TRANSCRIPTION OF THE PROCEEDINGS IN THIS CASE.

DATED AT SAN DIEGO, CALIFORNIA, THIS 17TH DAY OF  
AUGUST, 2006.

A handwritten signature in cursive script, reading "Robert F. Stark". The signature is written in dark ink and is positioned above a horizontal line.

ROBERT F. STARK  
OFFICIAL COURT REPORTER

1  
STATE OF CALIFORNIA,)

) SS

COUNTY OF SAN DIEGO.)

I, OPHELIA CHAVEZ CORREA, DO HEREBY CERTIFY THAT I AM AN  
OFFICIAL COURT REPORTER IN THE SUPERIOR COURT OF THE  
STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SAN DIEGO;  
THAT AS SUCH REPORTER, I TOOK DOWN IN SHORTHAND NOTES THE  
PROCEEDINGS HAD IN THE ABOVE-ENTITLED CAUSE; AND THAT THE  
FOREGOING TRANSCRIPT CONSISTING OF PAGES FROM  
CONTAINS A FULL, TRUE AND CORRECT RECORD OF MY SHORTHAND NOTES  
SAID PROCEEDINGS HAD AT SAID TIME AND PLACE.

DATED AT SAN DIEGO, CALIFORNIA, THIS 16<sup>th</sup> DAY OF  
October, 2006.

Opelia Chavez Correa  
OPHELIA CHAVEZ CORREA,  
CSR #2326  
OFFICIAL COURT REPORTER

EXHIBIT A

DETECTIVE DARIN RIES  
TRIAL TESTIMONY

191

1 THE CLERK: PLEASE STATE YOUR NAME AND SPELL YOUR NAME FOR  
2 THE RECORD.

3 THE WITNESS: DARIN RIES. D-A-R-I-N R-I-E-S.

4 THE CLERK: THANK YOU.  
5

6 DIRECT EXAMINATION

7 BY MS. MAUND:

8 Q HOW ARE YOU EMPLOYED?

9 A AS A DETECTIVE WITH THE SAN DIEGO POLICE DEPARTMENT.

10 Q HOW LONG HAVE YOU BEEN A PEACE OFFICER?

11 A A LITTLE OVER EIGHTEEN AND A HALF YEARS.

12 Q AND WHAT IS YOUR CURRENT ASSIGNMENT?

13 A I'M ASSIGNED TO THE NARCOTICS SECTION.

14 Q AND WHAT DO YOU DO ON A DAILY BASIS?

15 A MY PRESENT ASSIGNMENT WE HANDLE NARCOTICS COMPLAINTS,  
16 CITIZEN CALLING COMPLAINTS. WE DO BACKGROUND ON THEM, RESEARCH  
17 THEM. IF WE CAN ORGANIZE A BUY/BUST OR SOME TYPE OF A BUY  
18 OPERATION TO PURCHASE NARCOTICS, WE WILL DO THAT. IF WE CAN'T DO  
19 THAT, WE WILL SURVEIL THE TARGET, THE RESIDENCE, PERSON, FOLLOW  
20 UP ON THAT, TRY TO DO -- TO CLOSE THE COMPLAINT, TAKE CARE OF THE  
21 DRUG PROBLEMS.

22 Q HOW MANY ACTIVE CASES DO YOU HAVE GOING ON  
23 APPROXIMATELY RIGHT NOW?

24 A COMPLAINTS I PERSONALLY HAVE APPROXIMATELY THIRTY.  
25 THAT COVERS WESTERN DIVISION WHICH IS OCEAN BEACH, NORTH PARK,  
26 HILLCREST, LINDA VISTA. ALSO CENTRAL DIVISION WHICH COVERS ALL  
27 DOWNTOWN, LOGAN HEIGHTS, GOLDEN HILL, BANKERS HILL.

28 Q AND OTHER THAN COMPLAINTS, DO YOU HAVE A NUMBER OF

EXHIBIT  
A

197

1 REFRESH YOUR MEMORY.

2 Q ALL RIGHT.

3 NOW, YOU WERE CONTACTED AS RELATES TO THIS CASE FOR AN  
4 INCIDENT JANUARY 21ST, 2000, INVOLVING ROBBYE ANDERSON.

5 DETECTIVE RIES, DO YOU HAVE ANY INDEPENDENT KNOWLEDGE OF THIS  
6 EVENT?

7 A NO, I DO NOT.

8 Q BUT HAVE YOU HAD AN OPPORTUNITY TO LOOK AT THE PACKAGE  
9 THAT YOU JUST DESCRIBED OR WAS THERE A PACKAGE THAT WAS AVAILABLE  
10 TO YOU TO LOOK AT TO TRY TO REFRESH YOUR MEMORY?

11 A YES.

12 Q AND WHEN YOU LOOKED AT THE PACKAGE, DID YOU RECOGNIZE  
13 ANY OF THE DOCUMENTS?

14 A YES.

15 Q HOW DID YOU RECOGNIZE THEM?

16 A THE INVESTIGATOR'S REPORT, THAT'S MY FORMAT, THE FORMAT  
17 I USE. EACH INVESTIGATOR WILL HAVE HIS OWN STYLE, THE WAY HE  
18 WRITES HIS REPORTS. SO I RECOGNIZE MY REPORT THAT WAY.

19 I ALSO ON THE IMPOUND TAGS RECOGNIZED -- I IMPOUNDED  
20 THE NARCOTICS RECOVERED THAT DAY, AND I RECOGNIZED MY WRITING.

21 Q AND AS THE IMPOUNDED NARCOTICS ON THAT DAY, WHAT DID  
22 YOU -- WAS IT IN YOUR PERSONAL HANDWRITING?

23 A YES.

24 Q AND WHAT DID YOU IMPOUND ON THAT DAY?

25 A ONE PIECE OF ROCK COCAINE I BELIEVE.

26 Q AND SO YOU WROTE THAT IMPOUND REPORT AND THE REPORT  
27 THAT YOU READ THAT HAD YOUR NAME ON THAT. DID THAT DOCUMENT THE  
28 INCIDENT REGARDING WHAT WE HAVE REFERRED TO AS A BUY/BUST OR AN

## EXHIBIT A

1 Q BUT IN NO WAY DID YOU SIGN THIS REPORT THAT YOU ARE  
2 SAYING IS YOURS.

3 A I JUST TYPED MY NAME IN. I DON'T SIGN THEM.

4 Q NOW, DO YOU OBSERVE -- DID THIS PERSON WHO YOU  
5 IDENTIFIED AS ROBBYE ANDERSON GIVE YOU SEVERAL PIECES OF ROCK  
6 COCAINE?

7 A NO, HE DID NOT.

8 Q OKAY.

9 WHAT DID YOU OBSERVE EXACTLY?

10 A FROM THE BEGINNING? FROM WHERE?

11 Q WELL, AS FAR AS THE ROCK COCAINE, WHO GAVE WHO WHAT AS  
12 FAR AS THE COCAINE OR THE --

13 A ARE YOU ASKING FOR MY CONTACT WITH MR. ANDERSON?

14 Q YES.

15 A OR ARE YOU ASKING FOR THE TOTAL INCIDENT?

16 Q WELL, I'M ASKING FOR THE TOTAL INCIDENT.

17 A OKAY.

18 I WAS ON THE SOUTH SIDE OF THE STREET, 1500 OR 1600 K  
19 STREET. I NOTICED A GROUP ON THE NORTH SIDE. I APPROACHED THE  
20 GROUP. AS I GOT CLOSER, PROBABLY WITHIN FIFTEEN FEET, I SAW MR.  
21 ANDERSON WITH HIS LEFT HAND OUT, PALM UP. I SEEN HIM PICK UP A  
22 SMALL, WHITE, ROCK-LIKE OBJECT, HAND IT TO A MALE. THE MALE  
23 THERE PUT THAT OBJECT IN HIS LEFT FRONT PANTS POCKET.

24 Q SO YOU ACTUALLY OBSERVED THIS PERSON THAT YOU SAID IS  
25 ROBBYE ANDERSON GIVE THIS OTHER PERSON WHAT APPEARED TO BE ROCK  
26 COCAINE.

27 A CORRECT.

28 Q AND THIS OTHER PERSON IS ALSO IDENTIFIED IN YOUR

## EXHIBIT A

1 REPORT, CORRECT?

2 A CORRECT.

3 Q AND THAT PERSON WOULD BE MR. JOSEPH KAISER.

4 A YES.

5 Q YOU CAN LOOK AT YOUR REPORT.

6 A CAN I LOOK AT IT REALLY QUICK?

7 Q YES, YOU COULD.

8 A THAT'S CORRECT.

9 Q SO YOU ACTUALLY OBSERVED THIS TRANSACTION TAKE PLACE  
10 RIGHT IN FRONT OF YOU.

11 A YES.

12 Q OKAY.

13 NOW, WHAT WAS GIVEN THAT APPEARED TO BE ROCK COCAINE  
14 BASE, DID YOU TEST IT YOURSELF?

15 A YES, I DID.

16 Q YOU GAVE IT A PRESUMPTIVE TEST?

17 A THAT IS CORRECT.

18 Q OKAY.

19 WHAT EXACTLY IS THAT?

20 A A PRESUMPTIVE TEST?

21 Q YES.

22 A IT'S A SMALL CHEMICAL PLASTIC KIT WE CALL THEM NIK  
23 KITS, N-I-K. WHAT YOU DO IS TAKE A SMALL PORTION OF THE  
24 SUBSTANCE, YOU PLACE IT INSIDE IT. THERE'S LITTLE CAPSULES  
25 INSIDE IT. YOU SEAL BECAUSE IT IS CHEMICALS, AND YOU POP THE  
26 CAPSULES. DEPENDING ON WHAT KIND OF DRUG IT IS, THEY HAVE THEM  
27 SPECIFICALLY MADE FOR COCAINE. WHEN YOU POP THAT, THE CHEMICALS  
28 WORK THROUGH AND COMBINE WITH THE CONTROLLED SUBSTANCE, AND IT



EXHIBIT A

THE COURT

33

1 SERIOUS OFFENSE. AND I DON'T THINK IT'S THE KIND OF CRIME THAT  
2 IS GOING TO UNDULY INFLAME THE PASSIONS OF THE JURY, WHERE THE  
3 JURY IS GOING TO ACT ON THE BASIS OF EMOTION RATHER THAN RATIONAL  
4 THOUGHT. THAT'S SOMETHING I'M SURE WE WILL DISCUSS IN JURY  
5 SELECTION. AND I EXPECT PEOPLE WHO HAVE HAD A PERSONAL  
6 EXPERIENCE WITH CONTROLLED SUBSTANCES, PARTICULARLY COCAINE BASE,  
7 SOME OF THOSE WILL PROBABLY BE EXCUSED DURING THE SELECTION  
8 PROCESS. I MEAN THOSE ARE PEOPLE FOR WHOM THAT EVIDENCE MIGHT  
9 HAVE SOME PARTICULAR EMOTIONAL CONTENT. BUT I EXPECT WE WILL  
10 BECOME AWARE OF THAT PROBLEM IF IT IS A PROBLEM DURING THE JURY-  
11 SELECTION PROCESS. BUT JUST IN GENERAL THEY ARE NOT PARTICULARLY  
12 EMOTIONAL IN CHARGE OR INFLAMMATORY SORT OF OFFENSES I THINK.

13 MR. HERNANDEZ, WHAT'S YOUR POSITION IN THAT REGARD?

14 MR. HERNANDEZ: MY POSITION IS, YOUR HONOR, THAT I THINK  
15 THERE ARE SUFFICIENT DISSIMILARITIES BETWEEN THE OTHER ACT WHICH  
16 THE PEOPLE PROPOSE USING AND THE CASE AT ISSUE. ALTHOUGH BOTH  
17 INVOLVE DRUGS AND ALTHOUGH BOTH INVOLVE THE SALE OF DRUGS.

18 THE COURT: MAYBE I MISUNDERSTOOD YOU. YOU SAY THEY ARE NOT  
19 SUFFICIENTLY SIMILAR OR THEY ARE?

20 MR. HERNANDEZ: I AM SAYING THEY ARE NOT. I CAN POINT THREE  
21 AREAS FROM THE TOP OF MY HEAD.

22 THE COURT: SURE.

23 MR. HERNANDEZ: ONE AREA IS THAT -- I DON'T KNOW ABOUT THE  
24 OTHER CASE, BUT IN THIS AREA THERE'S A THIRD PARTY INVOLVED WHO  
25 IS ACTUALLY THE OWNER OF THE VEHICLE WHICH MY CLIENT WAS CLOSE TO  
26 WHERE MY CLIENT CAME FROM.

27 THE COURT: AS I UNDERSTAND IN THIS CASE, I DON'T KNOW THAT  
28 WE ARE GOING TO GET INTO THE OWNERSHIP OF THE VEHICLE, BUT IN THE

EXHIBIT A

34

1 OTHER CASE THERE WAS APPARENTLY THE BLACK FEMALE AND A FELLOW, AN  
2 INDIVIDUAL BY THE NAME OF MR. KAISER. WERE EITHER ONE OF THEM  
3 ARRESTED DO YOU THINK?

4 MS. MAUND: KAISER WAS A CO-DEFENDANT.

5 THE COURT: THAT'S HOW HE'S REFERRED TO. SO WE HAVE  
6 CO-DEFENDANTS IN BOTH CASES AS I UNDERSTAND IT.

7 MS. HERNANDEZ: I DON'T THINK MR. DELBERT ROSE WAS EVER A  
8 CO-DEFENDANT IN THIS CASE.

9 THE COURT: WELL, I THINK CO-DEFENDANT MAY EMBRACE MORE THAN  
10 LITERALLY OR STRICTLY BEING CHARGED WITH THE SAME CRIME.

11 MR. HERNANDEZ: IF I CAN CONTINUE ON, YOUR HONOR, . . .

12 THE COURT: SURE. I MEAN THAT'S MY REACTION TO THAT. I  
13 THINK THAT'S TOO STRICT INTERPRETATION. WE ARE TALKING HERE  
14 ABOUT INTENT. IF WE ARE TALKING ABOUT IDENTITY, THERE HAS TO BE  
15 A VIRTUAL FINGERPRINT OR SIGNATURE.

16 MR. HERNANDEZ: RIGHT.

17 THE COURT: BUT WE ARE JUST TALKING ABOUT INTENT. THE CASES  
18 SAY THE SIMILARITIES DON'T HAVE TO BE THAT STRIKING TO PROVE  
19 INTENT.

20 MR. HERNANDEZ: THE OTHER DISSIMILARITIES IS, YOUR HONOR, I  
21 KNOW THE PEOPLE IN THE PROPOSED OTHER ACTS THERE WAS PRE-RECORDED  
22 MONEY FOUND ON THE DEFENDANT'S PERSON. IN THAT CASE THIS IS NOT  
23 THE CASE. THE CLIENT NEVER TOUCHED ANY PRE-RECORDED MONEY AT  
24 ALL. THERE IS NEVER A COMPLETION. IT'S OUR POSITION THE  
25 POLICEMAN IS TRYING TO GET MY CLIENT TO SELL HIM DRUGS. THAT  
26 DOES NOT HAPPEN; THERE'S NOTHING EXCHANGED IN THIS CASE.

27 THE COURT: THAT'S MY UNDERSTANDING. I DO UNDERSTAND THAT.

28 THE SIMILARITIES HERE I THINK ARE THE DEFENDANT'S

## EXHIBIT A

1 ACTIONS, AND THE DEFENDANT'S STATEMENTS IN THE CASE I THINK ARE  
2 PRETTY SIMILAR. THE FACT THAT IN OUR CASE, OUR INSTANT CASE, IT  
3 DIDN'T RESULT IN A CONSUMMATED SALE, I MEAN I TAKE THAT POINT.  
4 BUT I'M NOT SURE HOW SIGNIFICANT THAT IS. I THINK THE -- A  
5 REASONABLE INTERPRETATION OF THE OFFICER'S TESTIMONY IN OUR CASE  
6 MAY BE THAT HE WAS SORT OF BACKED INTO A CORNER BECAUSE HE WASN'T  
7 ABOUT TO SMOKE THAT SAMPLE THAT THE DEFENDANT GAVE HIM. AND SO  
8 HE REALLY COULDN'T PUSH THINGS TOO MUCH MORE. AND HE, I THINK,  
9 AT MY READING OF HIS TESTIMONY AT THE PRELIM., HE REALLY GAVE THE  
10 ARREST SIGNAL SOONER THAN HE THOUGHT HE OUGHT TO. AND HE REALLY  
11 THOUGHT THAT HE ULTIMATELY WAS GOING TO GET A TWENTY FROM YOUR  
12 CLIENT. BUT I UNDERSTAND THAT DIDN'T MATERIALIZE. SO I TAKE  
13 THAT POINT.

14 MR. HERNANDEZ: MY OTHER POINT IS, YOUR HONOR, THIS IS  
15 MAINLY THE CRUX OF MY ARGUMENT, IS THAT THIS IS NOT A SITUATION  
16 WHERE MY CLIENT ADMITTED POSSESSING IT, BUT HE WASN'T INTENDING  
17 TO SELL OR ANYTHING LIKE THAT. MY CLIENT FROM THE GET-GO HAS  
18 DENIED THAT HE POSSESSED EVEN THE DRUGS IN THIS CASE. SO WE ARE  
19 NOT GOING TO BE ARGUING SIMPLE POSSESSION VERSUS POSSESSION FOR  
20 SALE WHICH WOULD MAKE INTENT IRRELEVANT.

21 IN FACT, IN THE POLICE REPORT MY CLIENT ACTUALLY GIVES  
22 A STATEMENT TO THE POLICE OFFICER WHILE HE'S BEING ADMONISHED OR  
23 AFTER BEING ADMONISHED THAT DIDN'T COME OUT IN THE PRELIM. I DID  
24 NOT GIVE YOU DRUGS. I DID NOT SELL YOU ANY DRUGS. AND THIS IS  
25 TAKEN FROM THE POLICE REPORT.

26 SO I REALLY, WITH ALL DUE RESPECT, YOUR HONOR, I THINK  
27 ONCE THE JURY HEARS ABOUT THAT OTHER ACT WHICH THE PEOPLE WANT TO  
28 INTRODUCE, I THINK IT WOULD BE UNDULY PREJUDICIAL, AND I THINK

22  
DEFENDANT: Line 23-25 - This was stated by the defendant during  
the time Officer Chavez was stating the charges  
to the defendant, at the police station.

## EXHIBIT A

1 THEY WILL CONVICT BASED ON THAT PAST CONDUCT ON THE PRESENT  
2 CRIME.

3 I THINK THERE IS DEFINITELY ISSUES OF FACT IN THIS  
4 CASE. BASICALLY THE JURY IS GOING TO HAVE TO DECIDE WHO DO YOU  
5 BELIEVE IN THIS CASE.

6 THE COURT: I DO UNDERSTAND THAT YOUR CLIENT APPARENTLY HAS  
7 CONSISTENTLY SAID I NEVER SOLD YOU ANYTHING. BUT I THINK THE  
8 EVIDENCE, AT LEAST IT WILL BE REASONABLE FOR THE JURY TO CONCLUDE  
9 FROM THE EVIDENCE THAT HE DID. AND I THINK -- MISS MAUND, DO YOU  
10 UNDERSTAND THAT THE LITTLE PIECE THAT WAS GIVEN AND URGING THE  
11 UNDERCOVER OFFICER TO GET IN THE CAR AND SMOKE THAT PIECE, THAT  
12 THAT ACTUALLY CHANGED HANDS, THAT THE DEFENDANT ACTUALLY GAVE HIM  
13 THAT LITTLE PIECE, OR DID HE JUST SHOW THAT TO HIM?

14 MS. MAUND: MY UNDERSTANDING THE EVIDENCE WILL SHOW HE GAVE  
15 I THINK THREE SMALL PIECES OF ROCK COCAINE TO THE OFFICER WHO HAD  
16 IT AS HE WALKED AWAY FROM THE CAR, AND THEN HE DID THE SIGNAL,  
17 AND THEN HE, THE OFFICER, DETECTIVE, IMPOUNDED IT. AND THAT'S  
18 THE SUBSTANCE THAT FRANK HEALY WILL COME IN AND SAY IT'S A .07  
19 GRAMS OF COCAINE BASE.

20 THE COURT: THAT'S MY UNDERSTANDING. I MEAN NOW IF THE  
21 DEFENDANT TESTIFIES, HE MAY SAY I NEVER EVEN GAVE HIM THOSE THREE  
22 LITTLE PIECES. BUT I THINK THE OFFICER IS GOING TO TESTIFY THAT  
23 HE DID. AND, THEREFORE, IT WILL BE REASONABLE FOR THE JURY  
24 MAYBE, DEPENDING ON WHO THEY BELIEVE, TO DECIDE THAT THOSE THREE  
25 LITTLE PIECES, THOSE LITTLE SAMPLES, IF YOU WILL, ACTUALLY WERE  
26 -- CHANGED HANDS OR ACTUALLY WERE GIVEN TO THE OFFICER BY YOUR  
27 CLIENT.

28 SO I THINK THAT'S -- TO ME THAT'S NOT REALLY A

## EXHIBIT A

37

1 DISTINCTIVE DISSIMILARITY FRANKLY. IT'S NOT A COOKIE CUTTER,  
 2 IT'S NOT AN EXACT REPLICATION OF THE PRIOR SITUATION, I DO  
 3 UNDERSTAND THAT; BUT I SAY THE CASES SEEM TO BE PRETTY CLEAR THAT  
 4 DEPENDING ON THE THEORY OF ADMISSIBILITY, IDENTITY REQUIRES THE  
 5 GREATEST DEGREE OF SIMILARITY. INTENT, MODUS OPERANDI, SOME  
 6 OTHER THEORIES REQUIRE LESS SIMILARITY.

7 AS FAR AS UNDUE PREJUDICE, I THINK THE CASES ARE LEGION  
 8 THAT IT IS NOT UNDUE PREJUDICE WITHIN THE MEANING OF 352 SIMPLY  
 9 BECAUSE IT TENDS TO PROVE THE CASE. ALL THE PEOPLE'S EVIDENCE  
 10 TENDS TO PROVE THE CASE AGAINST THE DEFENDANT. SO UNDUE  
 11 PREJUDICE MEANS THAT IT'S GOING TO INFLAME THE PASSIONS OF THE  
 12 JURY AND EMOTION IS GOING TO RULE OVER REASONABLE, RATIONAL  
 13 CONSIDERATION OF THE EVIDENCE. AND FOR THE REASONS INDICATED  
 14 EARLIER, I DON'T THINK THERE'S A SUBSTANTIAL DANGER OF THAT IN  
 15 THIS CASE FRANKLY. UNLESS I'M MISSING SOMETHING.

16 MR. HERNANDEZ: I JUST WANT TO MAKE MY RECORD.

17 THE COURT: ABSOLUTELY.

18 MR. HERNANDEZ: I CAN UNDERSTAND THE COURT'S RULING,  
 19 UNDERSTANDING MY CLIENT'S ONLY STATEMENT WAS I DID NOT SELL YOU  
 20 ANYTHING. WE ARE TALKING AGAIN NOT JUST SELLING BUT FURNISHING  
 21 AS WELL.

22 THE COURT: I THINK HE THINKS HE WAS REAL CUTE BECAUSE HE  
 23 DIDN'T ACTUALLY -- HE TRIED TO GET THE OFFICER TO SMOKE IT. AND,  
 24 OF COURSE, THE OFFICER WASN'T ABOUT TO DO THAT. SO I THINK YOUR  
 25 CLIENT IS REAL CUTE, HE THINKS HE'S REAL CUTE, BECAUSE HE DIDN'T  
 26 ACTUALLY SELL ANYTHING.

27 MR. HERNANDEZ: IF THE COURT CAN PERMIT ME, I'M TAKING THIS  
 28 FROM THE POLICE REPORT, THE ENTIRE QUOTE FROM MY CLIENT AFTER HE

DEFENDANT: Judge David <sup>24</sup> M. Gill statement on line 22-28  
 shows PREJUDICE against the defendant before  
 the Trial even started, which he helped with  
 anything to have the defendant found guilty.

## EXHIBIT A

39

1 MATTERS BEFORE WE -- THE JURORS PRESUMABLY ARE BACK OUTSIDE NOW.  
 2 IT'S FIVE AFTER 2:00. I DON'T WANT TO KEEP FORTY-FIVE PEOPLE  
 3 WAITING TOO LONG.

4 MS. MAUND: YOUR HONOR, THE ONLY THING I HAD OTHER THAN THE  
 5 MOTION TO EXCLUDE WITNESSES THAT HAS BEEN GRANTED WAS SONIA  
 6 DANIELS ANDERSON AS A DEFENSE WITNESS. MR. HERNANDEZ TOLD ME  
 7 RIGHT BEFORE WE CAME IN TODAY A SIMPLE OFFER, BUT I JUST WANTED  
 8 TO MAKE SURE THAT THAT'S ALL THE DISCOVERY HE HAD WAS THE ONE-  
 9 SENTENCE OFFER OF PROOF THAT SHE WOULD BE PROVIDING FINANCIAL  
 10 BACKGROUND OF THE DEFENDANT. 'CAUSE IT WAS NEWS TO ME SHE WAS  
 11 TESTIFYING. I WOULD LIKE A DATE OF BIRTH OR ANY OTHER  
 12 IDENTIFYING INFORMATION SO I CAN PREPARE FOR HER TESTIMONY.

13 THE COURT: ALL RIGHT. WELL, THE THEORY OF ADMISSIBILITY ON  
 14 THE FINANCIAL ASPECT WOULD BE THAT HE DOESN'T HAVE A MOTIVE TO BE  
 15 SELLING.

16 MR. HERNANDEZ: WELL, HE HAS MONEY, YOUR HONOR. WHERE HE  
 17 GOT THAT MONEY FROM BASICALLY.

18 THE COURT: THAT'S RIGHT. IT IS ANOTHER PART OF THE  
 19 EVIDENCE I GUESS THAT HE HAD \$116.00.

20 MR. HERNANDEZ: RIGHT.

21 THE COURT: SO SHE IS GOING TO EXPLAIN THE SOURCE OF THAT,  
 22 'CAUSE YOU EXPECT THE PEOPLE ARE GOING TO ARGUE THAT'S INDICIA OF  
 23 SALES.

24 MR. HERNANDEZ: CORRECT.

25 THE COURT: I TAKE THAT POINT.

26 ANY OBJECTION TO GIVING HER A DATE OF BIRTH?

27 MR. HERNANDEZ: NO. SHE IS VERY NICE. THAT'S NOT A

28 PROBLEM. I DON'T KNOW IT RIGHT NOW, BUT SHE WILL BE OUT THERE.

25

DEFENDANT: Lines 4-23 - MRS. Sowin Daniels Anderson was a Vital  
 Witness for the defendant and was excluded out the Trial Court  
 Room thru-out the Trial, but the Court never called her in as  
 a witness. Another act of Railroadng the defendant thru Trial.

THE COURT

14

5

1 DISCUSS, TAKE ROLL, GET THE JURORS IN AND GET STARTED WITH THE  
2 SELECTION PROCESS.

3 MS. MAUND: THAT'S FINE, YOUR HONOR.

4 MR. HERNANDEZ: WE'RE READY TO CALL THE JURORS IN.

5 THE COURT: ALL RIGHT.

6 IT WAS INDICATED THAT MR. ANDERSON'S WIFE WAS  
7 PRESENT IN THE COURT AS A POTENTIAL WITNESS FOR THE DEFENSE.

8 IS THE OTHER WOMAN IN THE COURTROOM, IS SHE A  
9 POTENTIAL WITNESS?

10 MR. HERNANDEZ: NO. SHE'S RELATED TO MY CLIENT'S MOTHER.

11 THE COURT: THAT'S FINE. THEY'RE CERTAINLY WELCOME TO BE  
12 HERE.

13 MS. MAUND: THERE'S A MOTION TO EXCLUDE.

14 THE COURT: I'M GOING TO ASK THAT SHE BE EXCLUDED NOW  
15 FROM THE COURTROOM DURING THE JURY SELECTION.

16 MS. MAUND: YES, BECAUSE WE'LL BE TALKING ABOUT CERTAIN  
17 ISSUES --

18 THE COURT: ALL RIGHT. MOTION IS GRANTED. SHE'LL HAVE  
19 TO STEP OUTSIDE. THE WIFE WILL HAVE TO BE OUTSIDE BECAUSE SHE'S  
20 A POTENTIAL WITNESS.

21 ALL RIGHT. LET'S TAKE A LITTLE BREAK IN PLACE  
22 WHILE THE CLERK IS MAKING COPIES RIGHT NOW I THINK OF THE JURY  
23 LIST. YOU'LL EACH GET A COPY OF THE JURY LIST, AND THEN SHE'LL  
24 TAKE ROLL AND THEN WE'LL GET UNDERWAY.

25 LOOK THE JURY LIST OVER AND SEE IF YOU RECOGNIZE  
26 ANY NAMES. SO YOU'RE ADVISED WE HAD STANDING ROOM ONLY IN THE  
27 JURY LOUNGE, WHICH IS NOT TOO UNUSUAL FOR A MONDAY MORNING. I  
28 GREET THE NEW JURORS EACH DAY AT 8 O'CLOCK DOWN IN THE LOUNGE.



2  
1 POSSIBLE DEFENSE WITNESSES? MY UNDERSTANDING AT THIS POINT IS  
2 IN TERMS OF SHARING WITH ME AS A --

3 MR. HERNANDEZ: YES, YOUR HONOR. POTENTIALLY HIS WIFE,  
4 SONIA ANDERSON, IS PRESENT IN COURT TODAY.

5 THE COURT: HER NAME IS SONIA?

6 MR. HERNANDEZ: SONIA DANIELS ANDERSON.

7 THE COURT: AND THE DEFENDANT HIMSELF. DO YOU THINK IT'S  
8 LIKELY HE WILL TESTIFY?

9 MR. HERNANDEZ: YES, YOUR HONOR.

10 THE COURT: THE COURT HAS RECEIVED FROM MS. MAUND A SET  
11 OF PROPOSED JURY INSTRUCTIONS. I LOOKED AT IT -- GIVEN IT A  
12 QUICK INITIAL LOOK AT, AND IT APPEARS TO BE A PRETTY THOROUGH  
13 AND COMPLETE SET OF STANDARD CALCRIM INSTRUCTIONS. I DID NOT  
14 SEE IT THERE AND IT MIGHT BE THERE, I JUST DIDN'T SEE IT, THE  
15 CALCRIM INSTRUCTION THAT DEALS WITH UNCHARGED PERPETRATORS.

16 I'M MINDFUL OF THE EVIDENCE THAT THERE WAS ABOUT  
17 DELBERT ROSE IN THE DRIVER'S SEAT OF THE FORD AND HE WAS ALSO  
18 ARRESTED BUT I PROBABLY OUGHT TO HAVE THAT INSTRUCTION. I  
19 DIDN'T REMEMBER THE CALCRIM NUMBER NOR THE CALJIC NUMBER, BUT  
20 WHATEVER IT IS DEALS WITH UNJOINED UNCHARGED PERPETRATORS.

21 HE WAS ARRESTED, WAS HE ALSO CHARGED?

22 MS. MAUND: HE WAS, YOUR HONOR, NOT AS A CO-DEFENDANT. I  
23 THINK IT WAS A POSSESSION CASE. I MEAN, THE CITY ATTORNEYS  
24 HANDLED HIS --

25 THE COURT: I ALSO NOTICE THIS WAS A BAGGIE OF MARIJUANA  
26 FOUND APPARENTLY INSIDE THE FORD EXPLORER. WAS HE CHARGED WITH  
27 THAT, DO YOU KNOW, MR. ROSE?

28 MS. MAUND: I DON'T KNOW. I CAN VERIFY AND HAVE THAT FOR

DEFENDANT: <sup>27</sup> If it was so much of this FORD EXPLORER AS EVIDENCE  
in this case, should this guy Delbert Rose should have  
been a Co-Defendant or at least a POTENTIALLY WITNESS  
AT TRIAL.



2  
1 THE COURT.

2 THE COURT: HAS THAT CASE BEEN RESOLVED, DO YOU KNOW?

3 MS. MAUND: NO, I HAVE TO LOOK INTO IT.

4 THE COURT: SO WITH WHATEVER HE'S CHARGED --

5 MS. MAUND: I BELIEVE SO.

6 THE COURT: -- THEY'LL DEAL WITH THE CALCRIM INSTRUCTION.

7 NEITHER SIDE HAS ANY INTENTION TO CALL HIM, THOUGH?

8 IS THAT WITNESS HERE?

9 MR. HERNANDEZ: NO, YOUR HONOR.

10 MS. MAUND: NO, YOUR HONOR.

11 THE COURT: ALL RIGHT.

12 THE DEFENSE DOES NOT NEED TO DUPLICATE THE EFFORT  
13 OF PRESENTING A COMPLETE SET OF PROPOSED JURY INSTRUCTIONS. IF  
14 YOU HAVE SOME PINPOINTS, MODIFICATIONS, VARIATIONS, FORECITE OR  
15 WHATEVER, THAT SHOULD BE YOUR FOCUS. BUT YOU DON'T NEED TO  
16 DUPLICATE HER EFFORTS SINCE WE'RE MARKING A BASIC SET.

17 SO EVERYBODY UNDERSTANDS THE COURT'S PROCESS OF  
18 INSTRUCTING THE JURY, I CONSIDER MY RESPONSIBILITY TO INSTRUCT  
19 THE JURY TO COMMENCE WHEN THE PANEL OF PROSPECTIVE JURORS ARRIVE  
20 IN THIS COURTROOM, AND AS PART OF THE JURISDICTION I WILL COVER  
21 THE BASES, PRESUMPTION OF INNOCENCE, REASONABLE DOUBT,  
22 CREDIBILITY OF WITNESSES. I'LL DO THAT, SAY, DURING THE JURY  
23 SELECTION PROCESS ITSELF.

24 ONCE THE JURY'S BEEN SELECTED, BUT BEFORE ANY  
25 OPENING STATEMENTS, I WILL INSTRUCT THE JURY IN A FAIRLY  
26 COMPLETE MANNER, BUT I TELL THEM THAT THESE ARE PRELIMINARY  
27 INSTRUCTIONS IN THE SENSE THAT THEY HAVEN'T HEARD ANY EVIDENCE  
28 YET. LATER ON, AFTER YOU ALL HAVE PRESENTED BOTH SIDES, HAVE

DEFENDANT: THE Delbert Rose case<sup>28</sup> was never looked into whether  
it had been RESOLVED or not. Never was mention again  
during this trial.

3 1 12 PRINCIPAL JURORS AND TWO ALTERNATES.

2 I TOOK NOTICE IN READING THE TRANSCRIPT OF THE  
3 PRELIMINARY EXAMINATION WHICH WAS CONDUCTED ON APRIL 28TH BEFORE  
4 JUDGE O'NEILL OF THIS COURT. PEOPLE BEING REPRESENTED BY A  
5 DIFFERENT DEPUTY AND WITH MR. ANDERSON APPEARING. ONE OF THEM  
6 WE'VE ALREADY TALKED ABOUT BEING MR. ROSE AND WHAT THE SITUATION  
7 WAS. THE OTHER MATTERS I NOTICED WAS I MENTIONED IN PASSING A  
8 MOMENT AGO THAT APPARENTLY THERE WAS A BAGGIE OF MARIJUANA FOUND  
9 IN THE VEHICLE.

10 DO YOU INTEND TO PRESENT THAT EVIDENCE A PART OF  
11 YOUR CASE IN CHIEF?

12 MS. MAUND: NO.

13 THE COURT: DOES THE DEFENSE?

14 MR. HERNANDEZ: NO, YOUR HONOR.

15 THE COURT: I WOULD THINK CAUTION -- ONE SIDE OR ANOTHER  
16 HAS A DIFFERENT VIEW ABOUT THAT, BUT OTHERWISE, I WOULD JUST  
17 THINK --

18 ALL RIGHT. IN LOOKING AT THE INFORMATION A COUPLE  
19 POINTS OCCURRED TO ME, AND I THINK ONE OF MY QUESTIONS MAY HAVE  
20 BEEN ANSWERED BY LOOKING AT THE SET OF PROPOSED JURY  
4 21 INSTRUCTIONS. THE PEOPLE HAVE ALLEGED, AND I DON'T THINK AS ANY  
22 CRITICISM, BUT THEY'VE ALLEGED THE FELONY. AND ESSENTIALLY IN  
23 THE STATUTORY LANGUAGE, WHICH PROBABLY SOME SECTION, SOME ON THE  
24 FACTUAL LEGAL THEORY IN WHICH THIS CASE IS GOING TO BE  
25 PROSECUTED, FIRST OF ALL, WITH THE VERSION OF CALCRIM 800 WHICH  
26 YOU HAVE SUBMITTED, THAT YOUR THEORY IN COUNT ONE IS FURNISHING  
27 OR GIVING AWAY RATHER THAN SELLING, OFFERING TO SELL, ET CETERA,  
28 ET CETERA.

29

DEFENDANT: More evidence found in MR. ROSE VEHICLE  
That should have been argued, but was not in the  
Trial Court.

4  
1 MS. MAUND: CORRECT, YOUR HONOR. AS TO COUNT ONE, YOU'RE  
2 RIGHT.

3 THE COURT: THAT'S THE .07 GRAMS.

4 MS. MAUND: YES.

5 THE COURT: ALL RIGHT. WELL, I THINK WHEN I READ THE  
6 INSTRUCTIONS TO THE JURY I CAN SAY FURNISHING AND GIVE AWAY,  
7 TAKE OUT THE REST OF THAT ABOUT THE SELLING, THE REMAINDER. I  
8 DIDN'T KNOW WHETHER YOU HADN'T OFFERED THEM BECAUSE YOU  
9 OBVIOUSLY WERE NOT PREPARED -- THE JURY INSTRUCTION TALKS ABOUT  
10 FURNISHING OR GIVING AWAY. SO IF THAT'S YOUR GIVING AWAY, OFFER  
11 TO SELL -- IT WILL BE FURNISHED OR GIVE AWAY ITSELF. I WILL  
12 CHANGE TO TAKE AWAY.

13 I DON'T THINK THAT'S WHAT REASONABLY IS EXPECTED  
14 THE EVIDENCE WILL BE.

15 ALL RIGHT. UNLESS -- I NOTICE YOU SUBMITTED THE  
16 CALCRIM INSTRUCTION THAT EACH COUNT ALLEGES A SEPARATE CRIME AND  
17 THEY'LL BE ABLE TO REACH A VERDICT ON EACH. SO COUNT ONE AND  
18 TWO, ARGUABLY THERE ARE TWO DIFFERENT QUANTITIES OF COCAINE BASE  
19 INVOLVED HERE, ACCORDING TO THE OFFICER'S TESTIMONY?

20 MS. MAUND: CORRECT, YOUR HONOR.

21 THE COURT: THAT'S FINE. WITH RESPECT TO COUNT TWO, IT  
22 SAYS "PURPOSES FOR PURCHASE" HERE. THAT'S NOT YOUR THEORY.

23 MS. MAUND: NO.

24 THE COURT: CAN YOU TAKE OUT "AND PURPOSE FOR PURCHASE"?

25 MS. MAUND: YES.

26 THE COURT: I'D LIKE TO SIMPLIFY THINGS AS MUCH AS  
27 POSSIBLE SO THE JURY DOES NOT GET CONFUSED I THINK.

28 WITH RESPECT TO THE ALLEGATION OF THE PRIORS, THOSE

EXHIBIT B

EXHIBIT B

OFFICER WILSON TRAIL

TESTIMONY

153

1 CUSTODY.

2 Q AND DID YOU HAVE AN OPPORTUNITY TO SEARCH THE  
3 DEFENDANT?

4 A YES, I DID.

5 Q AND WHAT DID YOU FIND ON THE DEFENDANT?

6 A IN HIS LEFT COAT POCKET I ENDED UP FINDING IN A  
7 CIGARETTE PACK TWO GLASS PIPES WHICH WERE USED FOR SMOKING  
8 DEVICES FOR ROCK COCAINE.

9 Q NOW, YOU SAID TWO GLASS PIPES. WHERE WERE THESE  
10 LOCATED?

11 A THEY WERE IN A CIGARETTE PACK.

12 Q IN HIS LEFT POCKET YOU SAID?

13 A YES.

14 Q OKAY.

15 DID YOU FIND ANYTHING ELSE OF SIGNIFICANCE?

16 A ENDED UP FINDING ABOUT \$116.00 IN ONE OF HIS PANTS  
17 POCKETS.

18 Q DO YOU REMEMBER WHAT TYPE OF CLOTHING OFFICER CHAVEZ  
19 WAS WEARING ON THIS DATE?

20 A HE WAS WEARING A -- I BELIEVE IT WAS BLUEJEANS, A BIG,  
21 BLACK, PUFFY JACKET. NOT QUITE SURE OF THE UNDERSHIRT THAT HE  
22 HAD UNDERNEATH THERE.

23 Q AND THAT'S THE CLOTHING YOU SAW OFFICER CHAVEZ WEARING  
24 ON THE STREET, 1000 BLOCK OF DID YOU SAY SIXTH AVENUE?

25 A SEVENTH.

26 Q SEVENTH AVENUE.

27 A YES, IT WAS.

28 Q NOW, TODAY WHAT IS YOUR ROLE WITH -- HAS YOUR ROLE

EXHIBIT B

OFFICER WILSON TRIAL  
TESTIMONY

160

1 BUST SIGNAL TO GO IN AND MAKE THE ARREST, THAT'S THE REASON I  
2 DROVE INTO THAT AREA. SO I HAD THAT WAY BEFORE SEEING THEM OR  
3 ACTUALLY MAKING CONTACT WITH THEM.

4 Q OKAY.

5 FROM THE TIME THAT YOU -- THAT YOU OBSERVED MY CLIENT,  
6 DID YOU EVER LOSE SIGHT OF HIM?

7 A NO, I DID NOT.

8 Q AND DID YOU EVER SEE MY CLIENT MAKE A TOSSING MOTION  
9 LIKE TO TOSS ANYTHING AWAY?

10 A NO, I DID NOT.

11 Q NOW, DID YOU -- HOW LONG WERE YOU AT THE SCENE AFTER  
12 YOU MADE CONTACT WITH MY CLIENT?

13 A I WAS THERE FOR MAYBE ABOUT ANOTHER TEN MINUTES.

14 Q AND WHAT DID YOU DO DURING THOSE TEN MINUTES?

15 A I ENDED UP OBTAINING HIS INFORMATION. OFFICER TAGABAN  
16 SOON ARRIVED, AND SHE WAS CONDUCTING THE SEARCH IN THE VEHICLE,  
17 IN THAT AREA. SO I JUST MAINTAINED COVERING HER, MAKING SURE FOR  
18 HER SAFETY.

19 Q NOW, WHEN YOU SAY YOU OBTAINED INFORMATION, YOU GOT MY  
20 CLIENT'S NAME AND HIS DATE OF BIRTH.

21 A YES, I DID.

22 Q AND DID HE MISREPRESENT HIMSELF TO YOU IN ANY WAY AS  
23 FAR AS YOU KNOW?

24 A NOT THAT I REMEMBER. NO, HE DIDN'T.

25 Q NOW, -- AND, OFFICER, YOU DID NOT SEE ANYTHING CLOSE TO  
26 A DRUG TRANSACTION OCCUR BETWEEN OR HAPPEN BETWEEN OFFICER CHAVEZ  
27 AND MY CLIENT.

28 A I DIDN'T SEE THEM DO ANY HAND-TO-HAND, NO. I WAS NOT

EXHIBIT B

161

WILSON

1 IN A POSITION FOR THAT.

2 Q NOW, YOU TESTIFIED EARLIER THAT YOU RECOVERED TWO  
3 PIPES.

4 A YES, I DID.

5 Q AND DID YOU MAKE THAT NOTATION IN YOUR REPORT?

6 A I MADE THE NOTATION OF THE ONLY ONE PIPE BECAUSE IT WAS  
7 A USED PIPE. THE OTHER PIPE WAS UNUSED.

8 Q DID YOU MAKE THAT -- DID YOU NOTE THAT DISCREPANCY IN  
9 YOUR REPORT?

10 A NO, I DID NOT.

11 Q DID YOU SPEND ANY TIME AT ALL AT THE SCENE LOOKING FOR  
12 THREE GRAMS OF UNACCOUNTED-FOR COCAINE BASE?

13 A I RECALL LOOKING AROUND IN THE AREA SEEING IF THERE WAS  
14 ANY ADDITIONAL SUBSTANCE THAT COULD HAVE BEEN TOSSED OR DROPPED  
15 BY THE SUSPECT.

16 Q AND HOW MUCH TIME DID YOU SPEND LOOKING AROUND?

17 A ABOUT TEN MINUTES IF I RECALL.

18 Q THE ENTIRE TEN MINUTES YOU WERE THERE YOU WERE LOOKING  
19 FOR IT.

20 A YEAH. TALKING WITH HIM AND THEN ASSISTING. I WOULD  
21 SAY WE WERE THERE FOR ABOUT AN EXTRA TEN MINUTES.

22 MR. HERNANDEZ: OKAY. THANK YOU.

23 I HAVE NO FURTHER QUESTIONS.

24 THE COURT: ANYTHING FURTHER?

25 MS. MAUND: NOTHING FURTHER.

26 THE COURT: MAY THE WITNESS BE EXCUSED?

27 MS. MAUND: YES, YOUR HONOR.

28 MR. HERNANDEZ: YES.

EXHIBIT B OFFICER SPEARS TESTIMONY  
DURING TRIAL

218

1 Q ALL RIGHT.

2 DO YOU SEE THE INDIVIDUAL HERE IN COURT THAT OFFICER  
3 CHAVEZ CONTACTED OR WAS SPEAKING WITH?

4 A I DIDN'T GET A GOOD LOOK AT HIS FACE AT THE TIME THAT I  
5 HAD THE EYE.

6 Q ALL RIGHT.

7 BUT IT WAS AN AFRICAN-AMERICAN MALE.

8 A CORRECT.

9 Q ALL RIGHT.

10 AND ARE YOU REQUIRED WHEN YOU ARE WORKING IN THE  
11 CAPACITY THAT YOU DESCRIBED TO WRITE A REPORT?

12 A NO.

13 Q AND WHAT OTHER OFFICERS TO YOUR KNOWLEDGE WERE WORKING  
14 AS AN EYE IN THIS CASE ON THIS DATE AND TIME?

15 A DETECTIVE ZALDIVAR. I BELIEVE DETECTIVE PETERSON, AND  
16 I BELIEVE DETECTIVE LEMUS.

17 MS. MAUND: THANK YOU.

18 NOTHING FURTHER.

19 THE COURT: CROSS-EXAMINATION.

20 MR. HERNANDEZ: THANK YOU, YOUR HONOR.

21

22 CROSS-EXAMINATION

23 BY MR. HERNANDEZ:

24 Q OFFICER, I UNDERSTAND THAT YOU DID NOT PREPARE A REPORT  
25 IN THIS CASE. YOU ARE NOT REQUIRED TO PREPARE A REPORT. BUT DID  
26 YOU PREPARE A REPORT IN THIS CASE --

27 A I DID NOT, SIR.

28 Q -- WHERE YOU RECORDED YOUR OBSERVATIONS YOU JUST MADE



EXHIBIT B

SPEAKS

1 RIGHT NOW?

2 YOU MADE SOME OBSERVATIONS RIGHT NOW.

3 A YES, SIR.

4 Q YOU TESTIFIED --

5 A YES, SIR.

6 Q -- AS TO WHAT YOU REMEMBER YOU SAW.

7 A CORRECT.

8 Q AND YOU DID NOT MAKE A REPORT.

9 A I DID NOT, SIR.

10 Q NOW, DO YOU KNOW HOW MANY OFFICERS WERE WORKING THAT  
11 DAY?

12 A I COULDN'T TELL YOU.

13 Q COULD YOU EVEN APPROXIMATE HOW MANY OFFICERS WERE  
14 WORKING THIS DAY?

15 THE COURT: ON TEAM 8 I ASSUME YOU MEAN.

16 MR. HERNANDEZ: I'M SORRY?

17 THE COURT: I ASSUME YOU MEAN ON TEAM 8, NOT JUST GENERALLY.

18 MR. HERNANDEZ: YES. ON TEAM 8.

19 THE WITNESS: THE OFFICERS THAT I HAD SAID THAT I BELIEVED  
20 WERE WORKING. THAT'S ALL OF TEAM 8.

21 BY MR. HERNANDEZ:

22 Q HOW MANY IS THAT?

23 A THAT WOULD BE OFFICER TAGABAN, OFFICER WILSON,  
24 DETECTIVE LEMUS, DETECTIVE PETERSON, DETECTIVE ZALDIVAR, MYSELF,  
25 AND DETECTIVE CHAVEZ AT THE TIME.

26 Q NOW, HOW LONG WERE YOU SERVING AS THE EYES OFFICER ON  
27 THIS DAY OF THE INCIDENT?

28 A WE ARE ALL IN A CERTAIN LOCATION. AND IF THE

EXHIBIT B  
SPEARS

220

1 UNDERCOVER GOES IN OUR AREA, THEN THAT'S WHEN WE PICK UP THE EYE.  
2 I BELIEVE HE HAD WALKED EASTBOUND INTO MY AREA, SO I PROBABLY HAD  
3 THE EYE FOR A GOOD FIVE TO TEN MINUTES.

4 Q AND DURING THAT FIVE TO TEN MINUTES, YOU NEVER SAW  
5 ANYTHING CLOSE TO A DRUG TRANSACTION BETWEEN THE BLACK MALE AND  
6 OFFICER CHAVEZ.

7 A I DID NOT.

8 Q AND DURING THAT TIME YOU NEVER SAW -- DURING THAT TEN-  
9 MINUTE TIME YOU NEVER SAW THIS AFRICAN-AMERICAN MAKE A TOSSING-  
10 LIKE MOTION TO TOSS SOMETHING AWAY.

11 A I DID NOT, NO, SIR.

12 Q HOW LONG HAVE YOU KNOWN OFFICER CHAVEZ?

13 A PROBABLY FIVE YEARS.

14 Q AND HOW LONG HAVE YOU WORKED WITH HIM?

15 A THREE YEARS.

16 Q DO YOU CONSIDER YOURSELF FRIENDS?

17 A YEAH.

18 MR. HERNANDEZ: THANK YOU.

19 I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

20 THE COURT: THANK YOU.

21 REDIRECT.

22 MS. MAUND: NOTHING FURTHER.

23 THE COURT: MAY THE WITNESS BE EXCUSED?

24 MS. MAUND: YES.

25 MR. HERNANDEZ: YES.

26 THE COURT: THANK YOU.

27 THE WITNESS: THANK YOU, SIR.

28 (THE WITNESS WAS EXCUSED.)

EXHIBIT B

OFFICER TAGABOND TRIAL  
TESTIMONY

168

1 Q WHY NOT?

2 A WE HAD A SECOND BUY/BUST OPERATION THAT WAS GOING TO  
3 OCCUR IN THE EAST VILLAGE.

4 Q SO HOW WAS THIS, THE CAR LEFT?

5 A I LEFT IT LEGALLY PARKED ON THE EAST CURBLINE OF 1000  
6 SEVENTH AVENUE.

7 Q ALL RIGHT.

8 DID THE NARCOTICS, WHAT YOU BELIEVE TO BE ROCK COCAINE,  
9 THAT WAS LOCATED IN THE CIGARETTE BOX, DID IT APPEAR TO BE A  
10 USEABLE AMOUNT BASED ON YOUR TRAINING AND EXPERIENCE?

11 A YES, MA'AM.

12 MS. MAUND: NOTHING FURTHER AT THIS TIME.

13 THE COURT: THANK YOU.

14 CROSS-EXAMINATION.

15 MR. HERNANDEZ: YES.

16

17 CROSS-EXAMINATION

18 BY MR. HERNANDEZ:

19 Q OFFICER, YOUR CONTACT WAS STRICTLY WITH DELBERT ROSE.

20 A YES, SIR.

21 Q AND YOU ALSO REFERRED TO YOUR FUNCTION AS FAR AS ON THE  
22 DRUG BUST TEAM AS THE EYES OF THE OPERATION.

23 A NO, SIR. I WAS A SCOOP UNIT.

24 Q I'M SORRY?

25 A I WAS A SCOOP UNIT THAT NIGHT.

26 Q OKAY.

27 AND IS IT FAIR TO SAY THAT YOUR EYES WERE -- YOUR JOB  
28 WAS TO MAINTAIN THE SIGHT OF THE UNDERCOVER OFFICER AT ALL TIMES?

EXHIBIT B

169

TAB BOND

1 A NO, SIR. I WAS PARKED APPROXIMATELY TWO BLOCKS AWAY.  
2 I AM CALLED IN, YOU KNOW, WHEN THE BUY/BUST SIGNAL IS GIVEN. I  
3 DO NOT HAVE EYES ON THE OPERATOR AT THAT TIME.

4 Q HOW LONG WERE YOU AT THE LOCATION?

5 A AT THE LOCATION?

6 Q YES.

7 A A GOOD FIFTEEN, TWENTY MINUTES.

8 Q OKAY.

9 NOW, COULD YOU SEE OFFICER CHAVEZ WITH MY CLIENT?

10 A NO, SIR.

11 Q DID YOU SEE THEM TOGETHER?

12 A NO, SIR. NOT WHEN I ARRIVED ON SCENE, NO, SIR.

13 Q AT NO POINT DID YOU SEE THEM TOGETHER.

14 A NO, SIR.

15 Q AND AT SOME POINT -- WHEN DID YOU FOCUS ON MR.

16 ANDERSON?

17 A WHEN I DROVE INTO THE AREA, I SAW OFFICER WILSON WHO  
18 HAD DETAINED YOUR CLIENT.

19 Q AND HOW LONG DID YOU OBSERVE MY CLIENT WITH OFFICER  
20 WILSON?

21 A FEW SECONDS BECAUSE I WAS BEING DIRECTED TO THE  
22 VEHICLE.

23 Q WITH MR. DELBERT ROSE?

24 A YES, SIR.

25 Q AND AS FAR AS YOU KNOW, HE WAS THE REGISTERED OWNER OF  
26 THAT VEHICLE.

27 A YES, SIR.

28 Q SO WHATEVER YOU FOUND IN THAT VEHICLE BELONGED TO

EXHIBIT B  
TABABOWD

170

1 DELBERT ROSE.

2 A YES, SIR.

3 Q SO YOU DID NOT OBSERVE AT ALL ANY HAND-TO-HAND  
4 TRANSACTION BETWEEN MR. ANDERSON AND OFFICER CHAVEZ.

5 A THAT IS CORRECT.

6 Q NOW, YOU MENTIONED THAT YOU SPENT SOME TIME SEARCHING  
7 FOR A BUNDLE OF THREE GRAMS OF COCAINE.

8 A I WAS JUST SEARCHING THE ENTIRE VEHICLE.

9 Q FOR WHAT?

10 A FOR WHATEVER I FOUND.

11 Q OH. OKAY.

12 SO NO ONE CALLED TO YOUR ATTENTION, HEY, COULD YOU  
13 SEARCH SPECIFICALLY FOR A BUNDLE OF APPROXIMATELY THREE GRAMS OF  
14 COCAINE?

15 A I DO RECALL THAT INFORMATION WAS AIRED VIA THE RADIO,  
16 THAT THERE WAS ANOTHER BAG. I DID NOT KNOW THE AMOUNT, SO I WAS  
17 JUST SEARCHING FOR ANY TYPE OF A CONTROLLED SUBSTANCE, ANYTHING  
18 ILLEGAL.

19 Q NOW, YOU ALSO PREPARED A REPORT IN THIS CASE, DID YOU  
20 NOT?

21 A THAT IS CORRECT.

22 Q NOW, IN ANYWHERE IS IT DOCUMENTED IN YOUR REPORT THAT  
23 YOU HAD SPENT -- HAD MADE AN EFFORT TO LOCATE A BUNDLE OF  
24 APPROXIMATELY THREE GRAMS OF COCAINE?

25 A NO, SIR.

26 Q AT ANY POINT DID YOU PERHAPS MAYBE THINK OF CALLING A  
27 CANINE UNIT TO ASSIST IN THE SEARCH?

28 A NO, SIR.

EXHIBIT B

CHAVEZ TESTIMONY  
TRIAL

123

1 BY MR. HERNANDEZ:

2 Q OFFICER, SO DO YOU, AS YOU SIT HERE RIGHT NOW, DO YOU  
3 KNOW THE LAST DAY YOU WERE WORKING ON TEAM 8?

4 A NOT OFF THE TOP OF MY HEAD, NO.

5 Q AND ON THAT, THE DAY OF THE INCIDENT, APRIL 4TH, HOW  
6 MANY TEAM 8 MEMBERS WERE THERE WORKING?

7 A OFF THE TOP OF MY HEAD AGAIN, SIX AND THEN I WAS THE  
8 SEVENTH. PLUS A SERGEANT.

9 Q I'M SORRY?

10 A PLUS A SERGEANT THAT OVERSEES EVERYTHING.

11 Q SO SEVEN ASIDE FROM YOURSELF.

12 A CORRECT.

13 Q NOW, ANY OTHER TEAM MEMBERS OBSERVE THAT WOULD -- THAT  
14 YOU KNOW OF THAT WOULD HAVE OBSERVED MR. ANDERSON GIVE YOU THE  
15 THREE ROCKS THAT YOU TESTIFIED TO?

16 MS. MAUND: SPECULATION. OBJECTION. SPECULATION.

17 THE COURT: I THINK THE CALL OF THE QUESTION WAS IF HE KNOWS  
18 THAT, SO HE MAY ANSWER THAT.

19 THE WITNESS: I DON'T KNOW.

20 BY MR. HERNANDEZ:

21 Q AND PRIOR TO TODAY HOW MANY TIMES HAVE YOU TESTIFIED IN  
22 COURT?

23 A IN MY SEVEN YEARS?

24 Q YES.

25 A FIFTY.

26 Q OKAY.

27 AND I KNOW YOU RECEIVED EXTENSIVE OFFICER TRAINING.

28 DID YOU ALSO RECEIVE TRAINING IN HOW TO TESTIFY IN COURT?

EXHIBIT B

OFFICER CHAVEZ  
TRIAL TESTIMONY

129

1 WELL, HERE'S A PIECE THAT SAID I CONTINUED TO EXPRESS  
2 MY CONCERN ABOUT BEING ROBBED.

3 MR. HERNANDEZ: YOU KNOW THAT --

4 THE WITNESS: SO HE ASKED ME AGAIN.

5 MR. HERNANDEZ: OKAY.

6 THE WITNESS: AND I CONTINUED TO EXPRESS MY CONCERN.

7 BY MR. HERNANDEZ:

8 Q SO NOW YOU ARE SAYING HE DID ASK YOU. DOES IT SAY THAT  
9 IN YOUR REPORT, THAT HE ASKED YOU AGAIN?

10 A IT DOES NOT SPECIFICALLY SAY THAT IN MY REPORT.

11 Q OKAY.

12 NOW, HOW WAS IT -- AND I'M GOING BACK TO WHEN MY CLIENT  
13 -- WHO CONTACTED WHO ABOUT THE DRUGS IN THE FIRST PLACE?

14 A I APPROACHED HIM.

15 Q AND YOU ASKED HIM FOR A TWENTY.

16 A CORRECT.

17 Q AND DID YOU ASK HIM JUST ONE TIME?

18 A I ASKED HIM IF HE HAD A TWENTY. ONCE.

19 Q JUST ONCE?

20 A RIGHT THEN, WHEN I FIRST CONTACTED HIM, YES.

21 Q OKAY.

22 DID YOU ASK HIM ANY MORE TIMES AFTER THAT IF HE HAD A  
23 TWENTY?

24 A I LATER SAID JUST GIVE ME THE TWENTY SO I CAN GO.

25 Q HOW MANY TIMES DID YOU ASK HIM FOR A TWENTY?

26 A WELL, THE INITIAL TIME AND THEN --

27 Q THE ENTIRE TIME.

28 A I'M TELLING YOU.

44

DEFENDANT: RECORDS AND PROOF OF ENTRAPMENT.

EXHIBIT B  
CHAVEZ

130

1 Q OKAY.

2 A THE INITIAL TIME WHEN I FIRST CONTACTED HIM I ASKED HIM  
3 FOR THE TWENTY, AND THEN LATER ON WHEN I WAS EXPRESSING MY  
4 CONCERN ABOUT GETTING IN THE VEHICLE, I ASKED HIM AGAIN JUST GIVE  
5 ME THE TWENTY SO I CAN GO. SO THAT WOULD BE TWICE.

6 Q ARE YOU SURE JUST TWICE?

7 A THAT'S WHAT I'M TESTIFYING TO.

8 Q OKAY.

9 DO YOU REMEMBER TESTIFYING AT A PRELIMINARY HEARING ON  
10 APRIL 20TH? YOU SAID THAT, CORRECT?

11 THE COURT: SAID WHAT?

12 BY MR. HERNANDEZ:

13 Q YOU MENTIONED -- DID YOU TESTIFY AT A PRELIMINARY  
14 HEARING ON APRIL 20TH?

15 A YES, I DID.

16 Q AND THERE WAS A COURT REPORTER THERE.

17 A YES, THERE WAS.

18 Q AND THERE WAS A JUDGE THERE.

19 A YEAH.

20 Q AND WE TALKED ABOUT -- I WAS THERE, CORRECT? YOU  
21 REMEMBER ME?

22 A YES.

23 Q I ASKED YOU ABOUT -- QUESTIONS ABOUT WHAT HAPPENED ON  
24 THIS DAY, CORRECT?

25 A YES, YOU DID.

26 Q DO YOU REMEMBER ME ASKING YOU ABOUT HOW MANY TIMES YOU  
27 WOULD ASK MY CLIENT FOR A TWENTY?

28 A NOT SPECIFICALLY.



EXHIBIT B

CHAVEZ

135

1 PLASTIC, AND THEN THAT BASICALLY KEEPS IT TOGETHER SO WHEN  
2 SOMEONE WANTS A TWENTY, THEN THEY PICK OUT THE RIGHT PIECE AND  
3 GIVE THEM THAT PIECE. COCAINE BASE IN MY EXPERIENCE IS NOT  
4 USUALLY PACKAGED.

5 Q NOW, ALSO IT'S NOT UNCOMMON FOR DRUG DEALERS TO HAVE  
6 PAGERS AND CELL. PHONES, CORRECT?

7 A CORRECT.

8 Q DID MY CLIENT HAVE ANY PAGERS OR CELL. PHONES ON HIS  
9 PERSON?

10 A NO, HE DID NOT.

11 Q SO OBVIOUSLY THERE WASN'T ANYTHING GOING OFF DURING  
12 YOUR CONTACT WITH HIM.

13 A CORRECT.

14 Q AND HOW LONG WAS THAT CONTACT?

15 A I BELIEVE I ESTIMATED IN THE PRELIM. APPROXIMATELY FIVE  
16 MINUTES FROM THE TIME I CONTACTED HIM TO --

17 Q SO IT WASN'T A LONG CONTACT AT ALL.

18 A IT WAS FIVE MINUTES.

19 Q OKAY.

20 AND HE WAS CONTINUALLY IN YOUR VISION OF SIGHT, YOUR  
21 FIELD OF SIGHT.

22 A HE WAS WITH ME THE ENTIRE TIME.

23 Q NOW, YOU MENTIONED YOU WERE AS PART OF THIS DRUG TEAM,  
24 DRUG TEAM 8, FOR EIGHT MONTHS. WOULD YOU SAY -- WOULD YOU  
25 DESCRIBE IT AS MORE OR LESS IT'S A CONTROLLED SETTING WHEN YOU  
26 SET UP A DRUG BUST?

27 A I DON'T UNDERSTAND THE QUESTION. IF YOU CAN REPHRASE  
28 THAT, . . .

EXHIBIT B

136

CHAVEZ

- 1 Q YOU HAVE OFFICERS IN PLACE.
- 2 A WE HAVE OFFICERS, YES.
- 3 Q AND YOU ARE THE OFFICER THAT'S THE -- NOT THE DECOY BUT
- 4 THE PERSON WHO IS SUPPOSED TO BLEND IN WITH THE CROWD.
- 5 A CORRECT.
- 6 Q AND THERE ARE OTHER OFFICERS NEARBY.
- 7 A YES.
- 8 Q AND YOU MENTIONED SEVEN OFFICERS ON THIS DAY.
- 9 A CORRECT.
- 10 Q AND YOU WERE ARMED WITH A TRANSMITTER.
- 11 A I HAD A WIRE ON ME, YES.
- 12 Q COMMUNICATION DEVICE.
- 13 A A ONE-WAY TRANSMITTER, YES.
- 14 Q OKAY.
- 15 AND YOU WERE ALSO ARMED WITH PRE-RECORDED DOLLARS OR
- 16 MONEY.
- 17 A I DID HAVE PRE-RECORDED MONEY.
- 18 Q AND THE PRE-RECORDED MONEY IS, OF COURSE, A WAY TO
- 19 TRACE IT TO A POTENTIAL SELLER, CORRECT?
- 20 A YES.
- 21 Q IF THAT SELLER TAKES THE MONEY.
- 22 A YES.
- 23 Q NOW, THE FOCUS IS, OF COURSE, TO CATCH PEOPLE WHO ARE
- 24 DEALING DRUGS ON THE STREETS.
- 25 A THAT'S WHAT I WAS OUT THERE TO DO, YES. BUY DRUGS.
- 26 Q KIND OF LIKE A FISHING EXPEDITION.
- 27 MS. MAUND: OBJECTION. ARGUMENTATIVE.
- 28 THE COURT: SUSTAINED.

EXHIBIT B

OFFICER CHAVEZ  
TRIAL TESTIMONY

140

1 YOU MAY ANSWER.

2 THE WITNESS: YOU KNOW, I PROBABLY KNOW WHAT YOU'RE TALKING  
3 ABOUT, BUT I HAVE NEVER HEARD IT CALLED THAT, SO I DON'T KNOW.

4 BY MR. HERNANDEZ:

5 Q WHAT WOULD YOU CALL IT?

6 A I DON'T KNOW WHAT YOU SAID.

7 MS. MAUND: OBJECTION. SPECULATION.

8 MR. HERNANDEZ: OKAY.

9 BY MR. HERNANDEZ:

10 Q AND IS AUDIOTAPE OF A CONVERSATION CONSIDERED  
11 CORROBORATIVE EVIDENCE?

12 MS. MAUND: OBJECTION, YOUR HONOR. RELEVANCE.

13 THE COURT: SUSTAINED.

14 MR. HERNANDEZ: YOUR HONOR, IT WOULD GO TO HE'S BEEN  
15 QUALIFIED AS AN EXPERT.

16 THE COURT: OBJECTION IS SUSTAINED, COUNSEL.

17 BY MR. HERNANDEZ:

18 Q OFFICER, IS THERE ANY EVIDENCE IN THE CASE, IN THIS  
19 CASE, PERTAINING TO THE FACT THAT MY CLIENT POSSESSED SOMEHOW  
20 PRE-RECORDED BILLS?

21 A I NEVER SAID HE POSSESSED PRE-RECORDED BILLS.

22 Q I'M ASKING.

23 A I'M TELLING YOU.

24 Q SO THERE IS NO EVIDENCE OF THAT.

25 A HE NEVER POSSESSED PRE-RECORDED BILLS. I'M TELLING YOU  
26 THAT RIGHT NOW.

27 Q SO IN THIS CASE THERE IS NO CONFESSION OR ADMISSION.

28 MS. MAUND: OBJECTION, YOUR HONOR. HEARSAY.

EXHIBIT B

CHAVEZ

141

1 THE COURT: SUSTAINED.

2 BY MR. HERNANDEZ:

3 Q IS THERE ANY AUDIO RECORDING OF ANY CONVERSATION IN  
4 THIS CASE?

5 MS. MAUND: OBJECTION, YOUR HONOR. HEARSAY. RELEVANCE.

6 THE COURT: YOU MAY ANSWER.

7 THE WITNESS: NO, THERE IS NO RECORDED --

8 BY MR. HERNANDEZ:

9 Q IS THERE ANY VIDEO RECORDING THAT SUPPORTS WHAT YOU ARE  
10 SAYING?

11 A NO, THERE ISN'T.

12 Q IS THERE ANY OTHER -- YOU MENTIONED ALREADY THAT -- IS  
13 THERE ANY OTHER MEMBER FROM TEAM 8 THAT SUPPORTS WHAT YOU ARE  
14 SAYING TODAY?

15 MS. MAUND: OBJECTION. SPECULATION.

16 THE COURT: SUSTAINED.

17 BY MR. HERNANDEZ:

18 Q NOW, LET'S TALK ABOUT THE THREE GRAMS THAT YOU  
19 EYEBALLED EARLIER. OKAY?

20 A SURE.

21 Q NOW, YOU MENTIONED IN YOUR TESTIMONY THAT YOU EYEBALLED  
22 WHICH YOU APPROXIMATED TO BE THREE GRAMS OF COCAINE BASE.  
23 CORRECT?

24 A YES.

25 Q AND YOU PUT THAT DOWN IN YOUR REPORT, CORRECT?

26 A YES.

27 Q AND YOU TESTIFIED TO THAT IN THE PRELIMINARY HEARING AS  
28 WELL, SEEING THAT, CORRECT?

EXHIBIT 8

142

CHAVEZ

1 A YES.

2 Q AND IT WAS IN A BUNDLE.

3 A IT WAS IN A PLASTIC. YOU CAN CALL IT A BUNDLE.

4 Q OKAY.

5 IS THAT LIKE A PLASTIC BAGGY FOR LIKE A SANDWICH?

6 A IT'S THE SAME THING.

7 Q OKAY.

8 AND WAS MY CLIENT WEARING GLOVES?

9 A I DON'T SPECIFICALLY RECALL HIM WEARING GLOVES.

10 Q BUT THAT'S SOMETHING YOU WOULD HAVE NOTED ON YOUR  
11 REPORT, CORRECT?

12 A I DON'T SEE THE RELEVANCE, SO PROBABLY NOT.

13 Q I'LL GET TO THE RELEVANCE, OFFICER, BUT THERE WERE NO  
14 GLOVES AS FAR AS WE KNOW.

15 A NOT THAT I KNOW OF.

16 Q OKAY.

17 NOW, YOU'RE SURE THAT MY CLIENT HELD THAT BUNDLE IN HIS  
18 LEFT HAND.

19 A THAT'S WHERE I SAW IT.

20 Q OKAY.

21 AND YOU NEVER LOST SIGHT OF MY CLIENT, CORRECT?

22 A THAT'S KIND OF VAGUE. I WAS WITH HIM THE WHOLE TIME.

23 I, YOU KNOW, I PRETENDED TO OR HESITATED AND PRETENDED TO HIT THE  
24 PIPE AND OTHER THINGS, SO MAY HAVE LOST SIGHT FOR A FEW SECONDS,  
25 BUT I WAS WITH HIM THE ENTIRE TIME.

26 Q OKAY.

27 A AND YOU ARE PROBABLY GOING TO REFER TO A PRELIM.

28 Q YES.

50

THE BAGGIE OF THREE GRAMS.

EXHIBIT B

CHAVEZ

143

1 MR. HERNANDEZ: MAY I DO THAT, YOUR HONOR?

2 THE COURT: YES.

3 MR. HERNANDEZ: OKAY.

4 BY MR. HERNANDEZ:

5 Q OFFICER, CAN YOU PLEASE REFER TO PAGE 11 OF THE  
6 PRELIMINARY HEARING TRANSCRIPT.

7 A I SURE CAN.

8 Q LINES BETWEEN -- LINES BETWEEN 9 AND 14.

9 A I'M SORRY. WHAT LINES?

10 Q BETWEEN LINES 9 AND 14 ON PAGE 11.

11 A OKAY.

12 (THE WITNESS COMPLIED.)

13 Q NOW, ACCORDING TO WHAT YOU TESTIFIED TO UNDER OATH, DID  
14 YOU EVER LOSE SIGHT OF MY CLIENT AT ANY POINT?

15 A AND I TESTIFIED NO. HE WAS IN THE VEHICLE OR WITH ME.

16 Q AND MY QUESTION WAS REFERRED TO AT ANY POINT, CORRECT?

17 A YES.

18 Q SO WOULD YOU GIVE ME THAT THREE GRAMS OF COCAINE BASE  
19 AS SUBSTANTIALLY MORE THAN .07 GRAMS?

20 A YES. I WOULD SAY THAT.

21 Q AND IF SOMEONE WERE TO INGEST THREE GRAMS, WOULD THAT  
22 NOT RESULT IN THAT PERSON BEING HARMED, THAT MUCH COCAINE?

23 A INGEST MEANING?

24 Q TAKE.

25 A SMOKE IT?

26 Q YES.

27 A THAT'S A LOT OF COCAINE BASE.

28 Q OKAY.

EXHIBIT B

CHAVEZ

144

1 SO THE QUESTION I HAVE FOR YOU IS WHERE IS THE BINDLE;  
2 WHERE DID THE BINDLE ACCOUNTED FOR OF THE THREE GRAMS OF COCAINE?

3 A I DON'T KNOW.

4 Q NOW, WHAT WERE THE EFFORTS TO RECOVER THAT BINDLE?

5 A IT WAS NEVER RECOVERED.

6 Q WHAT WERE THE EFFORTS, THOUGH? I'M ASKING ABOUT THE  
7 EFFORTS. WAS THERE AN EFFORT TO RECOVER THE BINDLE?

8 A YES.

9 Q OKAY.

10 COULD YOU TELL ME ABOUT WHAT THOSE EFFORTS WERE?

11 A OFFICER WILSON SEARCHED MR. ANDERSON.

12 Q OKAY.

13 A AND THEN OFFICER TAGABAN SEARCHED THE VEHICLE.

14 Q AND YOU DIDN'T FIND THE BINDLE.

15 A AND SHE DID NOT FIND THE BINDLE.

16 Q AND THAT'S IT.

17 A WHAT DO YOU MEAN?

18 Q AS FAR AS YOUR EFFORTS TO FIND THE BINDLE, THAT WAS  
19 YOUR SEARCH.

20 MS. MAUND: ARGUMENTATIVE, YOUR HONOR.

21 THE COURT: OVERRULED.

22 YOU MAY ANSWER.

23 THE WITNESS: I TOLD THE OFFICERS THAT I HAD SEEN  
24 APPROXIMATELY THREE GRAMS IN HIS HAND AND ASKED THEM TO SEARCH  
25 THE AREA. THEY SEARCHED THE AREA.  
26 BY MR. HERNANDEZ:

27 Q AND YOU TOLD THEM YOU ALSO SAW IT WRAPPED IN A BINDLE,  
28 CORRECT?

EXHIBIT B

145

CHAVEZ

1 A I TOLD THEM -- I DESCRIBED WHAT I HAD SEEN, AND I ASKED  
2 THEM TO SEARCH THE AREA. I DIDN'T SPECIFICALLY GO BACK.

3 Q DID YOU PUT IN YOUR REPORT YOUR EFFORTS TO LOCATE THAT  
4 BINDLE?

5 A NO, IT IS NOT.

6 Q SO WOULD IT BE FAIR TO SAY HAD THAT BINDLE BEEN LOCATED  
7 IT COULD HAVE BEEN MAYBE FINGERPRINTED TO SEE IF IN FACT MR.  
8 ANDERSON TOUCHED THAT BINDLE?

9 MS. MAUND: SPECULATION.

10 THE COURT: SUSTAINED.

11 BY MR. HERNANDEZ:

12 Q OFFICER, WERE YOU MAYBE -- WELL, THIS IS -- THIS WAS --  
13 THIS INCIDENT OCCURRED AT NIGHT, CORRECT?

14 A YES.

15 Q AND CORRECT ME IF I'M WRONG, BUT THERE'S CHILDREN WHO  
16 TRAVERSE THE AREA WHERE THE INCIDENT TOOK PLACE, THAT TRAVERSE  
17 THE AREA THE FOLLOWING MORNING AND AFTERNOON, CORRECT?

18 MS. MAUND: SPECULATION.

19 THE COURT: AS WORDED I'LL SUSTAIN THAT OBJECTION, YES.

20 BY MR. HERNANDEZ:

21 Q LET ME JUST ASK YOU DIRECTLY, OFFICER. WERE YOU  
22 WORRIED MAYBE SOME CHILD COULD FIND THAT BINDLE IF IT WAS IN THE  
23 AREA?

24 A LIKE I SAID, I ASKED THE OFFICERS -- I TOLD THEM WHAT I  
25 SAW, AND I ASKED THEM TO SEARCH THE AREA FOR THIS PRODUCT. AND I  
26 RELAYED TO MY OFFICERS TO DO A GOOD SEARCH AND TRY TO LOCATE WHAT  
27 I SAW.

28 Q BUT YOU'RE THE INVESTIGATING OFFICER, RIGHT? CORRECT?



EXHIBIT D

ATTORNEY A. HERNANDEZ CLOSING ARGUMENT

1 WILSON AND TAGABAN ARE THE ONLY ONES WHO PREPARED A REPORT ASIDE  
2 FROM OFFICER CHAVEZ. YOU'RE TAKING NOTES. I KNOW YOU WERE  
3 PAYING ATTENTION. BUT MY OBSERVATIONS OF EIGHT PEOPLE WHO WERE  
4 AT THE SCENE OF THIS ALLEGED DRUG BUST, ONLY THREE PREPARED A  
5 REPORT. WHY DO I POINT THAT OUT. THREE OUT OF EIGHT.

6 BECAUSE THE PROSECUTOR IS RIGHT IN THIS CASE; SHE  
7 DOESN'T HAVE TO CALL EVERY SINGLE WITNESS OR POSSIBLE WITNESS IN  
8 THIS CASE. SHE DOESN'T HAVE TO PRODUCE EVERY SINGLE PHYSICAL  
9 EVIDENCE OR PIECE OF PHYSICAL EVIDENCE THAT COULD HAVE BEEN  
10 PRODUCED. BUT SHE STILL HAS TO PRODUCE ENOUGH CREDIBLE EVIDENCE  
11 TO PROVE TO YOU BEYOND A REASONABLE DOUBT THAT MR. ANDERSON  
12 COMMITTED THE CRIMES FOR WHICH HE IS CHARGED. SHE STILL HAS TO  
13 DO THAT. SO SHE HAS GOT TO DO BASICALLY WHATEVER IT TAKES TO  
14 OVERCOME THAT BURDEN OF PROOF, TO OVERCOME THAT STANDARD OF PROOF  
15 AND MEET HER BURDEN.

16 OKAY. OFFICER SPEARS TESTIFIED. NOW, HE WAS THE EYES  
17 OF THE OPERATION. OKAY. I DON'T KNOW IF IT IS SEMANTICS OR SOME  
18 SORT OF MISNOMER, BUT THE EYES KIND OF IMPLY THE PERSON IS  
19 ACTUALLY SEEING EVERYTHING, WATCHING. I KNOW THEY DON'T WANT TO  
20 -- I KNOW THEY WANT TO DOWNPLAY THE FUNCTION OF THE EYES, BUT  
21 WE'RE TALKING ABOUT A VERY LIMITED TIME HERE, LIKE A FIVE-OR-TEN-  
22 MINUTE SPAN WHERE THERE'S SIXTEEN EYES, EIGHT SETS OF EYES,  
23 HOWEVER YOU WANT TO PUT IT. EVERYBODY IS WORKING AS A UNIT,  
24 THAT'S WHY THEY CALL IT TEAM EIGHT. AND I THINK IT'S IMPORTANT  
25 TO NOTE THAT ONE OF THOSE OFFICERS SHOULD HAVE BEEN CONSTANTLY  
26 WATCHING WHAT WAS GOING ON EXACTLY BETWEEN OFFICER CHAVEZ AND MR.  
27 ANDERSON. SO THAT'S OFFICER SPEARS' TESTIMONY THERE.

28 I BELIEVE HE ALSO INDICATED A CERTAIN BIAS. HE

EXHIBIT D

A. HERWANDEZ

317

1 REFERRED AND I ASKED HIM ABOUT IT STRAIGHT OUT WHETHER OR NOT HE  
2 HAD A RELATIONSHIP OR WHETHER OR NOT HE WAS FRIENDS WITH OFFICER  
3 CHAVEZ. AND HE DID DISCLOSE THAT BIAS, THAT HE IS, INDEED, HIS  
4 FRIEND. NOT ONLY A TEAMMATE OF TEAM EIGHT, NOT ONLY PART OF TEAM  
5 EIGHT, BUT ALSO A FRIEND.

6 OFFICER TAGABAN, SHE IS THE ONE WHO INTRODUCED THE  
7 WHOLE CONCEPT OF EYES AND WHAT THE EYES MEAN TO -- WHAT THE EYES  
8 OFFICER AND THAT FUNCTION THAT POLICE OFFICER PERFORMS EXACTLY.

9 NOW, AND THEN WE HAVE OFFICER WILSON WHO TESTIFIES THAT  
10 HE'S THE ONE WHO SEARCHED MR. ANDERSON, FOUND A PIPE. OR PIPES.  
11 I STILL DON'T KNOW. I MEAN HE TESTIFIED THAT HE FOUND TWO PIPES  
12 ON MY CLIENT, MR. ANDERSON. BUT HE ALSO ACKNOWLEDGED WHEN I  
13 CONFRONTED HIM WITH BASICALLY HIS ONE-PAGE REPORT TO LOOK AT THAT  
14 REPORT WHICH HE DID AND WHICH YOU CANNOT IGNORE IS THAT IN HIS  
15 REPORT IT STATED PLAIN AND SIMPLE I RECOVERED A PIPE. A PIPE.  
16 SO WHAT IS IT, ONE OR TWO PIPES. I DON'T KNOW WHAT KIND OF  
17 DIFFERENCE THE WHOLE SIGNIFICANCE OF THE PIPE THING IS CONCERNED,  
18 BUT I'M GOING TO GET TO SOME OTHER INCONSISTENCIES.

19 I WILL SAY IF SOMEONE IS WILLING TO LIE ABOUT ONE  
20 LITTLE THING OR COVER UP ONE LITTLE THING, WELL, THE BIG THINGS  
21 IN THIS CASE, THEN MAYBE THAT'S SUBJECT TO COVERUP AS WELL, TOO.  
22 AND WE ALL KNOW THE WHITE ELEPHANT I'M TALKING ABOUT HERE.  
23 MISTER BINDLE. MISTER THREE GRAMS OF ROCK COCAINE.

24 NOW, YOU'RE GOING TO HAVE -- YOU'RE NOT GOING TO BE  
25 ABLE TO TAKE WITH YOU BACK THERE I DON'T THINK THESE TWO PIECES  
26 OF EVIDENCE, BUT YOU CAN EXAMINE THEM OUT HERE. WHAT I WANT YOU  
27 TO LOOK OUT FOR IS THINGS THAT I REFERRED IN MY CROSS-EXAMINATION  
28 WHEN I WAS QUESTIONING OFFICER WILSON AND OFFICER CHAVEZ. I

EXHIBIT D

318

A. HERNANDEZ

1 FORGET WHICH ONE IT IS, BUT DOWN HERE WRITTEN DOWN YOU ARE GOING  
2 TO READ FOR YOURSELVES WHEN QUESTIONED ABOUT THE AMOUNT, WHETHER  
3 IT'S ONE OR TWO PIPES, A GLASS NARCOTICS SMOKING PIPE FOUND ON  
4 ANDERSON BY OFFICER WILSON, THERE IS AN ASTERISK THERE. AND THEN  
5 UNUSED GLASS PIPE, BUT THERE IS NO REFERENCE TO OFFICER WILSON.  
6 WE ARE TO ASSUME ACCORDING TO THE WAY THE DISTRICT ATTORNEY  
7 PRESENTS HER CASE THAT OFFICER WILSON FOUND THAT THERE AND IT  
8 JUST WASN'T NOTED. AGAIN KEEPING IN MIND WHAT THE OFFICER  
9 TESTIFIED AS TO WHAT CONTAINED IN HIS REPORT.

10 NOW, THE WHITE ELEPHANT, GETTING TO THE WHITE ELEPHANT.  
11 IT'S NOT OUR CONTENTION THAT IT EXISTED AND JUST WASN'T FOUND. I  
12 THINK THAT'S KIND OF INSULTING TO PEOPLE'S INTELLIGENCE. AND I  
13 WILL GET INTO THAT. BUT THE OFFICERS, THE INTERESTING THING IS  
14 THEY NOTED THIS EFFORT. IF YOU WERE TO LISTEN TO THEIR TESTIMONY  
15 AND EVERYTHING THAT THEY ALL TESTIFIED, THEY ALL LOOKED FOR THE  
16 BUNDLE OF THREE GRAMS OF ROCK COCAINE, THREE GRAMS THAT IS FOUND,  
17 INGESTED BY SOMEBODY ELSE, A CHILD CERTAINLY COULD BE LETHAL.  
18 AND THEY JUST LEFT THE SCENE. FINE. WE TRIED LOOKING FOR THE  
19 BUNDLE. CAN'T FIND IT.

20 NOW, THE EXISTENCE OF THAT BUNDLE, WHETHER OR NOT IT  
21 EVEN EXISTED, IS CALLED INTO SERIOUS QUESTIONS. INTO SERIOUS  
22 QUESTION. BUT THE THING IS WHAT I AM SUBMITTING TO YOU LADIES  
23 AND GENTLEMEN IS THAT IT NEVER EXISTED. AND IT'S REALLY AN  
24 IMPORTANT PIECE OF EVIDENCE. IT'S LIKE THE SMOKING GUN. IT  
25 COULD HAVE BEEN THE SMOKING GUN FROM THE PROSECUTION'S CASE.  
26 AGAIN WE'RE LOOKING AT A CLOSED PERIOD OF TIME WHERE WE  
27 CONSTANTLY OBSERVING. HE OFFERED THE EXPLANATION SOMEHOW IT WAS  
28 IN THE CAR AND SPREAD OUT IN THE CAR OF MR. ROSE, DELBERT ROSE.

EXHIBIT D

319

A. HERNANDEZ

1 OKAY. HAVE YOU HEARD ANY TESTIMONY THAT SOMEHOW WE SAW HIM  
2 SHUFFLING AROUND AND THROWING OUT THE POWDERY SUBSTANCE. AND  
3 WHERE IS THE PLASTIC BAGGY. WHERE IS THE PLASTIC BAGGY. I MEAN  
4 WE'VE HEARD SOME TESTIMONY TO THAT EFFECT, BUT, AGAIN, NONE OF  
5 THE TEAM EIGHT MEMBERS CAME IN TO SAY THAT, THAT THEY SAW  
6 SOMETHING.

7 IN FACT, WHEN THE PROSECUTION WAS ALLOWED TO OPEN THE  
8 CASE AFTER SHE HAD RESTED AND THIS DOCUMENT FLEW IN WHICH I, YOU  
9 KNOW, I KIND OF EXPECTED THAT NEW EVIDENCE. DIDN'T YOU. SEE  
10 MAYBE ANOTHER MEMBER OF TEAM EIGHT THAT SAW SOMETHING, THAT SAW  
11 THE TRANSACTION OR SAW A TOSsing MOTION OF SOMEBODY TOSsing THE  
12 DRUGS. I MEAN THINK ABOUT THAT. I MEAN ALL THESE TEAM MEMBERS  
13 TESTIFIED THAT THEY SEARCHED. AND THEY ALSO ADMITTED THAT THEY  
14 DIDN'T MAKE THAT EFFORT, THAT SEARCH EFFORT, NOTED IN THEIR  
15 REPORT.

16 THEY ALSO ADMITTED, A COUPLE OF THEM, WHEN QUESTIONED,  
17 WHY DIDN'T YOU CALL A CANINE UNIT. WE HAVE SEEN THE CANINE UNIT.  
18 WE KNOW THOSE DOGS WILL SNIFF OUT ANYTHING, CERTAINLY DRUGS. I  
19 MEAN YOU KIND OF LIKE THEY HAVE THE AUDACITY TO COME UP WITH  
20 THIS. THEY HAVE THE ARROGANCE. THE GOVERNMENT HAS THE ARROGANCE  
21 IN THIS CASE TO THINK THAT YOU'RE JUST GOING TO ACCEPT THAT. OH.  
22 OKAY. WE ACCEPT THAT. YOU TRIED LOOKING. YOU COULDN'T FIND IT.  
23 OKAY. LET'S MOVE ON. LET'S CROSS THE T'S AND DOT THE I'S.  
24 LET'S JUST OVERLOOK THAT FACT. THAT EVIDENCE IS REALLY IMPORTANT  
25 WHEN YOU THINK ABOUT IT BECAUSE IT PROVES THAT A PERSON HAS A LOT  
26 OF DRUGS, A LOT MORE THAN SEVEN GRAMS THAT WERE FOUND, SIX OR  
27 <sup>0.7</sup>SEVEN GRAMS. AND SOMETHING ELSE THAT WOULD PROVE.

28 THESE ARE NOT DRUGS. THIS IS SUGAR. BUT BY WAY OF

EXHIBIT D  
A. HERNANDEZ

1 ILLUSTRATION, OKAY. I'M NOT WEARING GLOVES. BUT WHETHER THERE'S  
2 ANYTHING INSIDE, YOU CAN IMAGINE ROCK COCAINE. I'M TOUCHING  
3 THIS. THE OFFICER TESTIFIED THERE WERE NO GLOVES FOUND. AS FAR  
4 AS HE KNOWS MR. ANDERSON DIDN'T HAVE GLOVES ON. SO WHAT DO WE  
5 HAVE LEFT FOR FINGERPRINTS. FINGERPRINTS.

6 SO THERE'S TWO REASONS WHY THE OFFICERS I THINK WOULD  
7 HAVE MADE AN EFFORT TO FIND THIS IF IT EXISTED, TO FIND MISTER  
8 BINDLE. IT'S MY CONTENTION MISTER BINDLE NEVER EXISTED. BUT HOW  
9 IS IT MISTER BINDLE WAS INTRODUCED. OFFICER CHAVEZ MENTIONED  
10 THAT AT THE HEARING ON APRIL 20TH. HE TOOK AN OATH. HE  
11 TESTIFIED AS TO THE FACT HE BELIEVED WHEN HE WAS WORKING AS THE  
12 UNDERCOVER OFFICER, HE TESTIFIED ON THE LEFT HAND I SAW MR.  
13 ANDERSON HOLDING THE BINDLE AND HIS RIGHT HAND HE GAVE ME THE  
14 ROCKS. THINK ABOUT THAT. HE'S HOLDING IT. AND THAT WAS  
15 INTRODUCED BY CHAVEZ, THE FOUNDATION OF THE PEOPLE'S CASE.

16 AFTER THAT, THEN WE HAVE MISTER -- WE COULD HAVE HAD  
17 SOMEONE LIKE MR. HEALY, AN EXPERT, TESTIFY AS TO THE EXPERT. HE  
18 WOULD HAVE TAKEN THE STAND AND HE WOULD HAVE TESTIFIED OKAY, I  
19 EXAMINED THE EVIDENCE, AND THEY POINT TO THAT GUY RIGHT THERE.  
20 THAT WOULD HAVE BEEN HARD EVIDENCE. YOU GOT TO THINK WHO'S GOT  
21 THE BURDEN OF THIS CASE, WHO COULD HAVE OBTAINED THAT  
22 INFORMATION. WHO CHOSE NOT TO OBTAIN THAT INFORMATION. WHO'S  
23 MAKING IT UP. YOU CANNOT IGNORE THAT, LADIES AND GENTLEMEN. YOU  
24 CANNOT IGNORE THAT.

25 WE HAVE TEAM EIGHT STILL STANDING BY THEIR MAN, OFFICER  
26 CHAVEZ, SAYING THAT WE LOOKED FOR THE BINDLE.

27 NOW, THIS IS MY ONLY CHANCE TO ADDRESS YOU. AND WHAT I  
28 PREDICT THE PROSECUTOR IN THIS CASE IS GOING TO DO IS GET UP AND

EXHIBIT D  
A. HERNANDEZ

321

1 TELL YOU A BINDLE, THAT'S A RED HERRING. THAT IS A SMOKE SCREEN.  
2 DEFENSE IS TRYING TO CONFUSE YOU. BUT THE THING IS I'VE GIVEN  
3 YOU REASONS WHY I THINK THAT THAT EVIDENCE IS SIGNIFICANT IF IT  
4 IN FACT EXISTED.

5 SO BASICALLY WHAT WE HAVE HERE, WHAT I AM GOING TO  
6 ARGUE TO YOU, WHAT I AM GOING TO TELL YOU WITHOUT RESERVATION IS  
7 WE HAVE A DIRTY COP, CHAVEZ. I KNOW HE SMILED AT YOU A LOT,  
8 GOOD-LOOKING GUY. HE'S YOUNG. I MEAN HE'S GOING TO PRESENT  
9 HIMSELF WELL. TOLD YOU HE TOOK PART OF COURSE HOW TO PRESENT  
10 HIMSELF IN COURT. BUT HE'S GOING TO COME UP AND PRESENT HIMSELF  
11 TO YOU AND HAVE THE AUDACITY TO TELL YOU THAT I SAW A BINDLE OF  
12 COCAINE AND HAVE YOU ACCEPT THAT JUST BECAUSE HE SAID IT. DON'T  
13 FALL FOR THAT, LADIES AND GENTLEMEN. THINK ABOUT IT. THINK OF  
14 HOW IMPORTANT THAT EVIDENCE IF IT EXISTED. THINK ABOUT HOW THAT  
15 WOULD HAVE BEEN FOUND IN FACT IN THIS CASE WITH NOT EVEN THAT  
16 MUCH OF AN EFFORT. THE PROSECUTION IN THAT CASE OBVIOUSLY  
17 THOUGHT THAT WAS IMPORTANT ENOUGH BECAUSE SHE HAD HER WITNESSES  
18 ADDRESS THAT EVEN THOUGH IT WASN'T EVEN INCLUDED IN THEIR REPORT.

19 NOW, THE ANALOGY THAT I LIKE TO PRESENT TO YOU, AND I'M  
20 A MOVIE GUY, I LIKE MOVIES. MY WEAKNESS. I LIKE EVEN THOSE  
21 STUPID HORROR MOVIES, "JASON," THINGS LIKE THAT. AND WE GO TO  
22 MOVIES TO BE ENTERTAINED. BUT WE ALSO GO TO MOVIES TO BE STUPID  
23 IN A WAY BECAUSE WE GOT TO ACCEPT IMPOSSIBLE PROPOSITIONS, THINGS  
24 THAT DON'T MAKE SENSE, BECAUSE OTHERWISE WE ARE NOT GOING TO BE  
25 ENTERTAINED. WE WILL SAY THAT'S STUPID. THESE PEOPLE GOING TO  
26 WALK IN THE TUNNEL WHEN THEY SEE BODIES ALONG THE WAY. WHAT'S  
27 GOING TO HAPPEN TO THEM. WE WANT THINGS TO HAPPEN TO THEM. WE  
28 WANT TO SEE IT. WE WANT TO BE SCARED. NOW, THAT'S MOVIES. THIS

EXHIBIT D  
A. HERNANDEZ

322

1 IS REAL LIFE. SOMEBODY'S PERSONAL LIBERTY IS AT STAKE HERE.

2 MS. MAUND: OBJECTION. IMPROPER ARGUMENT.

3 THE COURT: OVERRULED.

4 MR. HERNANDEZ: SOMEBODY'S PERSONAL LIBERTY IS AT STAKE  
5 HERE. SO UNLIKE THE MOVIES, THINGS HAVE TO FALL INTO PLACE.  
6 THINGS HAVE TO MAKE SENSE. I'M ASKING YOU NOT TO LEAVE YOUR  
7 COMMON SENSE OUT THE DOOR. I WANT YOU TO USE YOUR COMMON SENSE.  
8 I WANT YOU ASKED -- I WANT YOU TO ASK THE REAL QUESTIONS IN THIS  
9 CASE. I WANT YOU TO ASK YOURSELF IF THIS REALLY MAKES SENSE THAT  
10 WE HAVE EIGHT OFFICERS LOOKING AT THIS ONE SPECIFIC LOCATION  
11 WHERE A REALLY SMALL AMOUNT OF TIME, CONTINUOUS OBSERVATION,  
12 SHOULD HAVE BEEN CONTINUOUS OBSERVATION, AND WE DON'T FIND MISTER  
13 BINDLE. AND WE DON'T HAVE ANYBODY ELSE TO SHOW THAT IN FACT A  
14 TRANSACTION HAD TAKEN PLACE OR INTERACTION BETWEEN CHAVEZ AND MY  
15 CLIENT.

16 I MEAN THE PROSECUTOR, YOU KNOW, PUT ON POWERPOINT.  
17 THEY ARE WALKING TOGETHER. BUT IF YOU LOOK AT WHAT SHE HAD IN  
18 HER POWERPOINT, THEY ARE DOING NOTHING ELSE BUT JUST WALKING  
19 TOGETHER. AND ISN'T THAT CONSISTENT WHEN I WAS ASKING CHAVEZ ON  
20 CROSS-EXAMINATION, YOU KNOW, HE GAVE YOU THE IMPRESSION HE WENT  
21 UP AND ASKED THE CLIENT RIGHT AWAY FOR A TWENTY, AND THE CLIENT  
22 WAS RIGHT AWAY GOING TO SELL HIM OR FURNISH HIM DRUGS. BUT IF  
23 YOU LISTEN ON CROSS-EXAMINATION HE ACTUALLY MADE FOUR ATTEMPTS.  
24 SO THAT WOULD EXPLAIN THEM WALKING TOGETHER. HE'S TRYING TO GET  
25 HIM TO SELL DRUGS. HE'S TARGETING HIM TO SELL HIM DRUGS. HE'S  
26 GETTING FRUSTRATED BECAUSE HE'S NOT SELLING HIM DRUGS BECAUSE HE  
27 DOESN'T HAVE ANY DRUGS. BUT HE HAS A GOOD IDEA AT THAT TIME  
28 THESE PEOPLE ARE OUT SELLING DRUGS.



EXHIBIT D  
A. HERNANDEZ

323

1                   NOW, HE ALSO ACKNOWLEDGED THAT MY CLIENT GAVE HIM HIS  
2 NAME. HE WAS COOPERATIVE. SUPPLIED HIM WITH A DATE OF BIRTH.  
3 NOW, IF I WOULD HAVE ASKED HIM, HE PROBABLY WOULD HAVE SAID, NO,  
4 BUT HE DID MAYBE ASK FOR HIS NAME AND FIND OUT THE INFORMATION HE  
5 WAS SOMEHOW INVOLVED IN SOME DRUG ACTIVITY THAT YOU HEARD DONE  
6 EARLIER, LIKE SIX YEARS AGO. WE WILL NEVER KNOW. BUT WE KNOW  
7 THAT ON THAT PARTICULAR INSTANCE AS TO HOW MANY TIMES HE TRIED TO  
8 GET MR. ANDERSON TO FURNISH OR SELL HIM DRUGS, HE DID NOT TAKE  
9 ONE, TWO, OR THREE, BUT FOUR TIMES.

10                   AND HE ACKNOWLEDGED WHEN I SHOWED HIM THE PRELIMINARY  
11 HEARING TRANSCRIPT, I MEAN THIS REPRESENTS THE TRUTH AS FAR AS WE  
12 KNOW IT, BECAUSE IT WAS IN A COURTROOM. THE OFFICER WAS UNDER  
13 OATH. HE HAD TO TELL THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT  
14 THE TRUTH. AND IF YOU WERE PAYING CAREFUL ATTENTION WHEN I  
15 SHOWED HIM THIS, HIS REACTION WAS KIND OF INTERESTING. OH, YOU  
16 COMING UP WITH THAT AGAIN. I'M COMING UP WITH THE TRUTH. HE'S  
17 GOT AN AVERSION TO THE TRUTH ALL OF A SUDDEN. HE DIDN'T TAKE THE  
18 OATH THEN AS HE DID NOW AND NOW HE'S CHANGING IT, AND HE WANTS  
19 YOU TO ACCEPT THAT. YOU CANNOT IGNORE THAT. YOU CANNOT IGNORE  
20 HIS DEMEANOR.

21                   AND WHEN YOU GET A JURY INSTRUCTION, YOU KNOW, ON  
22 JUDGING THE WITNESSES IN THIS CASE, I WANT YOU TO READ IT, AND I  
23 WANT YOU TO ANALYZE OFFICER CHAVEZ' TESTIMONY IN RELATION TO THIS  
24 CRITERIA BECAUSE IT SAYS WHAT YOU CAN CONSIDER WHEN YOU WANT TO  
25 DISCOUNT THE TESTIMONY, THE CREDIBILITY AND THE TESTIMONY OF A  
26 WITNESS, YOU CAN -- THE THINGS THAT ARE LISTED HERE APPLY TO  
27 OFFICER CHAVEZ. PLEASE DON'T IGNORE THAT. IT'S COMMON SENSE,  
28 TOO. I MEAN WHEN YOU THINK ABOUT IT, SOME OF THE FACTORS HERE,

EXHIBITS D  
A. HERNANDEZ

324

1 WAS THE WITNESS' BEHAVIOR, WHAT WAS THE WITNESS' BEHAVIOR WHILE  
2 TESTIFYING. WHAT WAS OFFICER'S DEMEANOR. I MEAN WHEN I FINALLY  
3 ASKED HIM, YOU KNOW, I HAD TO ASK HIM I MEAN I'M DEFENDING MY  
4 CLIENT, BUT I HAD TO ASK BECAUSE IT'S ONE HELL OF A COINCIDENCE  
5 THAT CHAVEZ WAS DEMOTED AROUND THE SAME TIME OF THE PRELIMINARY  
6 HEARING. HE'S ONLY WORKED THAT TEAM FOR EIGHT MONTHS, AND THAT'S  
7 IT. AND I HAD TO ASK DID IT HAVE ANYTHING TO DO WITH THE MISSING  
8 THREE GRAMS. HIS RESPONSE, HE WAS OFFENDED. OH, EXCUSE ME. I  
9 MEAN I ACTUALLY EVEN PITY THE GUY BECAUSE I DON'T THINK HE  
10 REALIZED THAT AND MAYBE HE WAS DEMOTED. BUT MY PITY DOES NOT  
11 EXTEND THAT FAR AS TO SACRIFICE MY CLIENT'S LIBERTY IN THIS CASE.  
12 NOT GOING TO DO THAT. I HAVE TO DO MY JOB. AND I BELIEVE I DID  
13 THAT. I EXPOSED THINGS IN OFFICER CHAVEZ THAT YOU COULD NOT  
14 IGNORE.

15 SOME OTHER THINGS. ANOTHER CRITERIA. DID THE WITNESS  
16 UNDERSTAND THE QUESTIONS AND ANSWER THEM DIRECTLY. WELL, CHAVEZ  
17 INDICATED HE DIDN'T KNOW WHAT CORROBORATION WAS OR WHAT THAT IS.  
18 I DON'T THINK MY VOCABULARY IS THAT HUGE. I DON'T THINK THAT'S  
19 THAT BIG OF A WORD. WE ALL KNOW WHAT CORROBORATION IS. SHE  
20 DOESN'T HAVE TO DO THAT, THE PROSECUTOR DOES NOT HAVE TO PRODUCE  
21 THAT, BUT SHE'S GOT TO SOMEHOW SUPPORT I WOULD THINK THE  
22 TESTIMONY OF THEIR ONLY WITNESS WHO CAN TESTIFY THAT MR. ANDERSON  
23 COMMITTED ONE OF THE THREE CRIMES. SHE'S HAD AMPLE OPPORTUNITY.  
24 SHE EVEN GOT TO REOPEN HER CASE. SHE DOESN'T DO THAT.

25 ANOTHER CRITERIA. DOES THE WITNESS HAVE A PERSONAL  
26 INTEREST IN HOW THE CASE IS DECIDED. YOU DECIDE THAT. YOU SAW  
27 OFFICER CHAVEZ SIT HERE THROUGHOUT THE TESTIMONY EVEN THOUGH HE  
28 WAS ALREADY DONE. HE STILL REMAINED IN THE COURTROOM BEFORE AND

EXHIBIT D  
A. HERNANDEZ

325

1 AFTER HIS TESTIMONY. I MEAN HIS CAREER, KIND OF A PERSONAL  
2 INTEREST IN THIS CASE, HOW THE OUTCOME OF THIS CASE COMES OUT.  
3 IT'S GOT TO AFFECT HIS CAREER.

4 THE WITNESS' ATTITUDE. YOU SAW CHAVEZ' ATTITUDE.

5 DID THE WITNESS MAKE IN THE PAST CONSISTENT OR  
6 INCONSISTENT, MAKE A STATEMENT IN THE PAST THAT IS INCONSISTENT  
7 OR CONSISTENT WITH THE TESTIMONY. WELL, WE HAVE A NUMBER OF  
8 PIPES. WE HAVE THE NUMBER OF ATTEMPTS THAT CHAVEZ WAS MAKING TO  
9 GET DRUGS FROM MY CLIENT.

10 ANOTHER INCONSISTENCY, AND THAT IS HE MADE IT SOUND  
11 THOUGH MY CLIENT REPEATEDLY TOLD HIM TO SMOKE IT IN THE BACK SEAT  
12 OF THE CAR. I MEAN ALONE THAT'S MAYBE NOT A BIG DEAL. MAYBE HE  
13 DIDN'T INCLUDE THAT IN HIS REPORT. BUT WHEN YOU CONSIDER THAT IN  
14 THE TOTALITY OF THE CIRCUMSTANCES HERE, IT'S ANOTHER LIE. IT'S  
15 ANOTHER LIE. THERE IS NO OTHER WAY OF PUTTING IT. MAYBE HE  
16 SHOULD HAVE READ THE TRANSCRIPT AND REALIZED WHAT HE SAID BACK  
17 THEN WHILE HE WAS UNDER OATH. BUT WHAT HE SAID BACK THEN WAS  
18 THAT WHAT HE SAID IN HIS REPORT, THAT MY CLIENT ONLY ASKED HIM  
19 ONE TIME, AND THAT'S IT. HE COMES IN AND TELLS YOU THAT ANDERSON  
20 ASKED HIM REPEATEDLY. SO HE WANTS YOU TO BELIEVE THAT.

21 ANOTHER CRITERIA IS HOW REASONABLE IS THAT TESTIMONY BY  
22 CHAVEZ. I'M NOT GOING TO BELABOR THE POINT THERE.

23 AND ANOTHER ONE IS DID THE EVIDENCE, DID OTHER EVIDENCE  
24 PROVE OR DISPROVE ANY FACT WHICH THE WITNESS TESTIFIED. AGAIN,  
25 WE GO TO THE PIPES. BOTH WILSON ACTUALLY AND CHAVEZ, MAINLY  
26 CHAVEZ TESTIFIED THERE'S TWO PIPES. THE EVIDENCE WHICH YOU ARE  
27 GOING TO GET TO EXAMINE SAYS ONLY ONE PIPE, INDICATES ONLY ONE  
28 PIPE BY WILSON.

63

EXHIBIT D  
A. HERNANDEZ

1 I TOLD YOU ABOUT THE BIGGEST LIE IN THIS CASE. THERE  
2 IS NO CORROBORATION WHATSOEVER. AND I BELIEVE THIS CASE WARRANTS  
3 THAT. WE HAVE MEMBERS FROM TEAM EIGHT THAT ARE TRYING THEIR BEST  
4 TO BACK UP WHATEVER CHAVEZ SAYS. CERTAINLY THEY ARE NOT  
5 TESTIFYING AGAINST HIM. WE HAVE EVIDENCE OF A COVERUP, EVIDENCE  
6 OF A DIRTY COP.

7 HOW DOES THE PROSECUTOR RESPOND TO THAT. WE KNOW  
8 THERE'S NO HARD EVIDENCE. WE KNOW THERE ARE NO OTHER WITNESSES.  
9 SHE INTRODUCES EXTRANEOUS EVIDENCE, EVIDENCE WHEN YOU THINK ABOUT  
10 IT REALLY DOESN'T -- IS NOT RELEVANT HERE. THIS IS A DRUG, A  
11 HAND-TO-HAND SUPPOSEDLY THAT TOOK PLACE. INTENT'S NOT AN ISSUE  
12 IF YOU ARE GOING TO SELL SOMEBODY SOMETHING AND THEY TAKE IT FROM  
13 YOU. INTENT IS THERE ALREADY. IT'S NOT THAT YOU POSSESS DRUGS  
14 FOR YOURSELF IF YOU ARE GIVING IT TO SOMEBODY ELSE OR TRYING TO  
15 SELL IT TO SOMEBODY ELSE. THINK ABOUT IT. HOW IS INTENT  
16 RELEVANT HERE. YET SHE INTRODUCES DELBERT ROSE BECAUSE THERE'S  
17 DRUGS IN THE CAR, EVEN THOUGH THERE'S NO CONNECTION, NO WITNESSES  
18 THAT TESTIFIES ANYTHING HAPPENS BETWEEN DELBERT ROSE AND MR.  
19 ANDERSON.

20 AND THEN OFFICER RILES COME IN TO TALK ABOUT SOME  
21 INCIDENT THAT HAPPENED SIX YEARS AGO THAT HE CAN BARELY REMEMBER.  
22 I MEAN I'M THINKING I GOT TO HAVE SOMEBODY TO LISTEN TO THAT  
23 OTHER END OF THAT TRANSMITTER, THAT COMMUNICATION THAT SAYS, HEY,  
24 THE TRANSACTION IS TAKING PLACE. IT'S OKAY TO DO THE BUST. A  
25 TAPE RECORDING, VIDEO, SOME OTHER WITNESS. THAT'S WHAT I WANT.  
26 BUT, INSTEAD, WHAT DO WE GET. AN OFFICER WHO TALKS ABOUT HOW  
27 ROBBY ANDERSON, THEY REFER TO HIM BEING INVOLVED IN SOME SORT OF  
28 DRUG MATTER.

EXHIBIT D  
A. HERNANDEZ

327

1 NOW, IT INVOLVED A WHITE SUBSTANCE WHICH THE OFFICER  
2 WHO ACKNOWLEDGES THAT HE'S NOT A CHEMIST OR BIOLOGIST OR HAS NO  
3 SPECIAL DEGREES TO TEST ANYTHING, SO WE HAVEN'T HEARD FROM AN  
4 ANALYSIS IN THAT INCIDENT HAPPENED SIX YEARS AGO. BUT WE JUST  
5 HAVE A LOT OF THINGS THAT ARE SOMEHOW SIMILAR THEY SAY TO HERE.

6 YOU WERE TAKING NOTES. YOU WERE PAYING ATTENTION. MY  
7 TAKE ON IT THEY ARE NOT EVEN CLOSE. I MEAN THEY BOTH INVOLVE  
8 DRUGS. THEY INVOLVE SOMETHING THAT LOOKS LIKE COCAINE. IN ONE  
9 INSTANCE THAT PERSON ROBBYE ANDERSON ACCEPTS THE PRE-RECORDED  
10 MONEY. IT DIDN'T HAPPEN IN THIS CASE. THERE IS ENOUGH  
11 DISSIMILARITIES I'M NOT GOING TO BELABOR THE POINT.

12 WHAT ELSE IS INTRODUCED. WHEN THE PROSECUTION REOPENS  
13 ITS CASE THIS IS BOOKING PHOTOGRAPH AND THAT'S ALL IT IS OF MY  
14 CLIENT LOOKING MENACING. NOW, I'M BRINGING THIS POINT ABOUT  
15 DELBERT, RILES, AND THE PICTURE. IT'S LIKE THERE'S OLD SAYING,  
16 WHEN YOU DON'T HAVE THE FACTS, WHEN YOU DON'T HAVE THE LAW, ARGUE  
17 THE FACTS. THE PROSECUTOR IN THIS CASE HAS NEITHER. SHE'S GOT A  
18 HIGH BURDEN TO MAKE. SHE WANTS TO WIN THIS CASE. SHE DOES. AND  
19 SHE'S DOING EVERYTHING SHE CAN TO WIN IT. I GIVE HER THAT.

20 BUT YOU GOT -- SHE NEEDS SOMETHING ELSE FOR YOU SOMEHOW  
21 TO PIN A CONVICTION ON MY CLIENT EVEN THOUGH SHE CAN'T PROVE HER  
22 CASE. AND IF YOU THINK ABOUT THESE THINGS, DELBERT ROSE, OFFICER  
23 RILES, AND THE INCIDENT THAT HAPPENED, SOME INCIDENT THAT  
24 HAPPENED SIX YEARS AGO, AND THE PHOTOGRAPH, WHAT'S SHE DOING. I  
25 MEAN ONE HAND SHE'S SAYING WE ARE NOT TRYING TO SHOW HIM AS A BAD  
26 PERSON AND YOU CAN'T, SHOULDN'T FACTOR THAT IN, THINK ABOUT HIM  
27 BEING A BAD PERSON; BUT THAT'S EXACTLY WHAT SHE IS DOING. I  
28 SUBMIT TO YOU THAT IS DISINGENUOUS FOR HER TO SAY THAT IN THIS

EXHIBIT D  
A. HERNANDEZ

328

1 CASE.

2 I MEAN THAT'S EXACTLY WHAT THEY'RE DOING. MR. ANDERSON  
3 HAS EXERCISED HIS RIGHT TO RELY ENTIRELY ON THE STATE'S EVIDENCE.  
4 HE'S EXERCISED HIS RIGHTS NOT TO TESTIFY. HE DIDN'T TAKE THE  
5 STAND. HE CHOSE NOT TO TAKE THE STAND AFTER ALL. HE SAW THE  
6 EVIDENCE. HE CHOSE NOT TO TAKE THE STAND. BUT HE'S STILL  
7 SUBJECT TO CHARACTER ASSASSINATION. IS THAT FAIR. IS THAT  
8 REALLY FAIR.

9 AGAIN I WANT YOU TO FOCUS ON THE FACTS PERTAINING TO  
10 THIS CASE. I WANT YOU NOT TO LOSE FOCUS ON THE FACT THAT WE'RE  
11 DEALING WITH OFFICER CHAVEZ, A DIRTY COP. I HAVE TO SAY IT. I  
12 GOT TO CALL IT LIKE IT IS. HE'S A DIRTY COP. HE EITHER STOLE  
13 THE THREE GRAMS OR HE LIED ABOUT IT. IT'S ONE OR THE OTHER WHEN  
14 YOU THINK ABOUT IT. AND WHAT HAPPENS WHEN SOMEONE LIES TO YOU IN  
15 YOUR REAL LIFE. I MEAN LET'S SAY, FOR EXAMPLE, SOMEONE THAT YOU  
16 -- SAY YOU ALLOWED TO STAY AT YOUR HOME AND YOU LEAVE A WALLET IN  
17 THE NIGHTSTAND. YOU DON'T KNOW HOW MUCH MONEY IS IN THERE, BUT  
18 YOU LEAVE YOUR WALLET THERE. YOU TRUST THIS PERSON TO COME INTO  
19 YOUR HOME, AS WE TRUSTED OFFICER CHAVEZ TO COME IN THIS COURTROOM  
20 AND TAKE AN OATH AND TELL US THE TRUTH. YOU LOOK AT YOUR WALLET  
21 AND IT'S OBVIOUS THERE'S SOME MONEY MISSING. HOW MUCH DID THAT  
22 PERSON TAKE. HOW MUCH OF THE TRUTH DID OFFICER CHAVEZ TAKE. HOW  
23 MUCH DID HE MAKE UP.

24 YOU GOT TO BASE YOUR DECISION THAT AFFECTS SOMEBODY'S  
25 LIFE ON BASICALLY ON WHAT OFFICER CHAVEZ SAID. AND I DON'T THINK  
26 YOU CAN DO THAT, LADIES AND GENTLEMEN. I HONESTLY DON'T THINK  
27 YOU CAN DO THAT IN THIS CASE. I THINK THERE'S BEEN SO MUCH  
28 INCONSISTENCIES, SO MANY LIES THAT ARE BORNE OUT WHEN YOU LOOK AT

EXHIBIT D  
A. HERNANDEZ

329

1 THE COMMON SENSE ASPECT IT CANNOT BE TRUE THE WAY OFFICER CHAVEZ  
2 SAYS IT WENT DOWN. IT JUST CAN'T.

3 YOU'RE GOING TO GET A LIMITING INSTRUCTION AND IT'S  
4 GOING TO TELL YOU CONSIDER THIS OTHER PRIOR ACT JUST FOR THAT AND  
5 DON'T CONSIDER IT FOR ANY OTHER REASON. WE ARE ALL HUMAN. I'M  
6 ASKING YOU TO REALLY FOCUS ON THE FACTS OF THIS CASE, ON WHAT'S  
7 REALLY IMPORTANT HERE: OFFICER CHAVEZ AND WHAT A WEAK FOUNDATION  
8 HE LAID FOR THE PROSECUTOR'S CASE IN THIS CASE.

9 I SUBMIT TO YOU THAT THIS CHARACTER ASSASSINATION ON MY  
10 CLIENT IS THE ONLY RED HERRING IN THIS CASE, IS AN ATTEMPT BY THE  
11 PROSECUTOR TO THROW YOU OFF, TO THROW YOUR FOCUS OFF AND NOT  
12 FOCUS ON THE ISSUES AND ON THE FACTS THAT PERTAIN TO WHAT  
13 HAPPENED ON APRIL 4TH.

14 SOMETHING ELSE I WANT TO POINT OUT THAT'S INTERESTING  
15 THAT I LOOKED OVER IS YOU'RE GOING TO GET I BELIEVE TO TAKE THESE  
16 NARCOTICS ANALYSIS REPORTS BACK THERE WITH YOU. AND WE'RE  
17 TALKING, YOU KNOW, SOMETHING THAT WASN'T TESTED BECAUSE I'M  
18 SAYING IT DIDN'T EXIST, A BAGGY OF DRUGS, MISTER BINDLE. BUT IF  
19 YOU LOOK AT THE NARCOTICS ANALYSIS REPORT ON WHAT I MOVED TO HAVE  
20 ADMITTED, THERE'S A LITTLE CHECKMARK HERE. IT SAYS HOLD FOR  
21 PRINTS. THIS IS ON DELBERT ROSE. IT'S IMPORTANT BECAUSE IT  
22 SHOWS YOU HOW IMPORTANT THAT EVIDENCE WOULD HAVE BEEN HAD IT  
23 EXISTED. MAYBE WE WOULDN'T BE HERE RIGHT NOW IF THAT EVIDENCE  
24 EXISTED; AND IF IT EXISTED, IT WOULD HAVE BEEN FOUND. THERE'S  
25 SOMETHING TO THINK ABOUT.

26 NOW, YOU'RE GOING TO GET AN INSTRUCTION TWO REASONABLE  
27 INTERPRETATIONS. YOU ARE GOING TO GET WHAT REASONABLE DOUBT IS.  
28 BUT WHEN YOU ARE DEALING WITH TWO REASONABLE INTERPRETATIONS,



EXHIBIT D  
A. HERWANDEZ

330

1 WHAT SHOULD WE DO. I KNOW YOU'VE ONLY HEARD FROM ONE SIDE IN  
2 THIS CASE. BUT WHEN YOU HAVE TWO REASONABLE CONCLUSIONS OR  
3 INTERPRETATIONS THAT YOU DERIVE FROM THE EVIDENCE, AND THEY BOTH  
4 SOUND REASONABLE UNDER THE LAW, LET'S SAY, WELL, IT COULD HAVE  
5 GONE THE WAY OFFICER CHAVEZ WENT, AND I'LL GIVE YOU THE OTHER  
6 INTERPRETATION, IT'S REAL SIMPLE. IT DIDN'T GO DOWN THAT WAY.  
7 IT'S JUST OFFICER CHAVEZ WALKING SIDE BY SIDE WITH MY CLIENT,  
8 TRYING TO GET HIM TO SELL DRUGS, AND THAT'S IT. HE ADMITTED TO  
9 YOU HE MADE NO OTHER DRUG BUSTS THAT DAY. WE GOT A TEAM OF EIGHT  
10 PEOPLE WORKING THERE. I MEAN I DON'T KNOW WHAT GOES ON IN TEAM  
11 EIGHT, AND IT'S NOT MY JOB TO PRESENT THAT, BUT THERE'S ANOTHER  
12 SIDE. IT DIDN'T HAPPEN. HE PLED NOT GUILTY. IN EFFECT HE TOLD  
13 YOU HE DIDN'T DO IT BY PLEADING NOT GUILTY TO ALL THE CHARGES.  
14 BUT WHEN YOU HAVE TWO INTERPRETATIONS, AND FOR THE SAKE OF  
15 ARGUMENT LET'S SAY THAT YOU BELIEVE WHAT OFFICER SAYS IS THE  
16 TRUTH. WELL, THE CONVERSE SAYS HE DIDN'T DO ANYTHING IS TRUE,  
17 TOO. IT'S ALSO REASONABLE I BELIEVE UNDER THE FACTS YOU HEARD IN  
18 THIS CASE. IN CASES OF A TIE, YOU GOT TO FIND NOT GUILTY OR  
19 INNOCENT, THE CLIENT INNOCENT OF THE CHARGES. THE DEFENDANT  
20 INNOCENT OF CHARGES.

21 EVEN ASSUMING THAT IT MAKES SENSE WHAT CHAVEZ IS  
22 SAYING. BUT THAT'S NOT OUR CONTENTION. OUR CONTENTION IS  
23 WHATEVER CAME OUT OF CHAVEZ' MOUTH IS UNREASONABLE, IS  
24 UNRELIABLE, IS A FABRICATION, IS AN EXAGGERATION. IN THAT  
25 INSTANCE YOU'VE GOT TO REJECT THAT. AND THEN YOUR WORK IS  
26 SIMPLE. AND YOU GOT TO FIND MR. ANDERSON NOT GUILTY. YOU HAVE  
27 TO UNDER THE LAW. IF YOU DO YOUR JOB, YOU HAVE TO FIND HIM NOT  
28 GUILTY.



EXHIBIT E

EXHIBIT E

1

1 (THURSDAY, 2:00 P.M., APRIL 20, 2006; SAN DIEGO, CALIFORNIA)

2 THE COURT: PEOPLE VERSUS ROBBYE R. ANDERSON, CASE NO.  
3 SCD198047. APPEARANCES, PLEASE.

4 MR. REIZEN: GOOD AFTERNOON, YOUR HONOR, PAUL REIZEN  
5 FOR THE PEOPLE.

6 MR. HERNANDEZ: GOOD AFTERNOON, YOUR HONOR.  
7 ANTHONY HERNANDEZ, OFFICE OF THE PUBLIC DEFENDER, FOR  
8 MR. ANDERSON WHO IS PRESENT IN CUSTODY.

9 THE COURT: THIS MATTER IS ASSIGNED HERE FOR  
10 PRELIMINARY EXAMINATION.

11 ANY MOTIONS BEFORE WE BEGIN?

12 MR. HERNANDEZ: NO, YOUR HONOR.

13 MR. REIZEN: NO, YOUR HONOR.

14 THE COURT: MR. PROSECUTOR, YOUR FIRST WITNESS.

15 MR. REIZEN: THANK YOU, YOUR HONOR. THE PEOPLE CALL  
16 OFFICER CHAVEZ.

17

18 **JOSE CHAVEZ,**

19 WAS CALLED AS A WITNESS, BY AND ON BEHALF OF THE  
20 PEOPLE, HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

21

22 THE CLERK: PLEASE BE SEATED AT THE WITNESS STAND.  
23 STATE YOUR FULL NAME AND SPELL YOUR LAST NAME.

24 THE WITNESS: JOSE CHAVEZ. LAST NAME SPELLED  
25 C-H-A-V-E-Z.

26 /////

27 /////

28 /////

EXHIBIT E

11

1       SHOWED IT TO ME.

2           Q.     BUT WHAT WAS ACTUALLY IN HIS HAND -- CORRECT ME IF I  
3       AM WRONG -- WAS ACTUALLY .07?

4           A.     NO.   THERE WAS A SEPARATE BAG THAT WAS NOT RECOVERED  
5       THAT I ESTIMATED TO BE AT LEAST THREE GRAMS OF COCAINE BASE.

6           Q.     WHERE WAS THAT BAG?

7           A.     IT WAS NEVER RECOVERED.   I DON'T KNOW WHAT HAPPENED TO  
8       IT.

9           Q.     SO THERE WAS APPROXIMATELY THREE GRAMS THAT WAS -- AND  
10      MY CLIENT WAS ARRESTED AT THE SCENE AND THAT BAG IS NOWHERE TO  
11      BE FOUND?

12          A.     WE DIDN'T FIND IT.

13          Q.     DID YOU EVER LOSE SIGHT OF MY CLIENT AT ANY POINT?

14          A.     NO.   HE WAS IN THE VEHICLE OR WITH ME.

15          Q.     SO WHAT WE ARE TALKING ABOUT AS TO WHAT HE ACTUALLY  
16      POSSESSED WAS. 07?

17          A.     THAT'S WHAT HE GAVE TO ME.

18          Q.     WHERE DID YOU SEE THIS APPROXIMATELY THREE GRAMS OF  
19      COCAINE BASE OF THIS UNCOVERED COCAINE?

20          A.     IT WAS IN HIS LEFT HAND WHEN HE WAS TRYING TO REASSURE  
21      ME THAT I WASN'T GOING TO GET ROBBED.

22          Q.     WHAT HAND DID HE USE TO HAND OVER TO YOU THE .07  
23      GRAMS?

24          A.     HIS RIGHT HAND.

25          Q.     NOW, HOW LONG DID THIS TRANSACTION TAKE PLACE?

26          A.     SINCE I CONTACTED HIM ON C STREET?

27          Q.     YES.

28          A.     ESTIMATE ABOUT FIVE MINUTES OR SO.

EXHIBIT E

12

1 Q. AND HOW LONG WAS THAT ROUGHLY WHEN HE FIRST TOLD YOU  
2 TO FOLLOW HIM TO THE VEHICLE?

3 A. HOW LONG WAS THE WALK?

4 Q. YEAH. HOW MANY BLOCKS?

5 A. IT WAS ABOUT A BLOCK AND A HALF.

6 Q. SO NOT VERY LONG AT ALL?

7 A. NOT TOO LONG.

8 Q. WAS ANY OF THIS CONVERSATION YOU HAD WITH HIM  
9 RECORDED?

10 A. NO, IT WAS NOT.

11 Q. WHY NOT?

12 A. WE DON'T DO THAT.

13 Q. YOU DON'T RECORD ANYTHING AT ALL?

14 A. NO.

15 Q. NOW, YOU MENTIONED YOU HAD SOME PRE-MARKED MONEY.

16 A. YES, I DID.

17 Q. WHAT WAS THAT MONEY?

18 A. IT WAS A PRE-RECORDED \$20 BILL.

19 Q. DID MY CLIENT EVER ACCEPT THAT PRE-RECORDED \$20 BILL  
20 FROM YOU?

21 A. NO, HE DID NOT.

22 Q. HOW MANY TIMES DID YOU OFFER THAT PRE-RECORDED \$20  
23 BILL TO MY CLIENT?

24 A. I JUST OFFERED IT ONCE WHEN HE GAVE ME THAT .07  
25 GRAMS.

26 Q. HE OFFERED IT ONE TIME AND THAT'S WHEN YOU GAVE THE  
27 SIGNAL TO THE OTHER OFFICERS FOR THE ARREST?

28 A. I REQUESTED A 20 MAYBE THREE OR FOUR TIMES. BUT LIKE

EXHIBIT E

13

1 I SAID, HE GAVE ME THE .07 GRAMS AND THAT'S WHEN I OFFERED MY  
2 \$20 BILL.

3 Q. BUT YOU WERE REQUESTING A 20 APPROXIMATELY THREE TO  
4 FOUR TIMES, BUT YOU ONLY OFFERED ONE TIME THE MONEY?

5 A. RIGHT.

6 Q. AND YOU ARE SAYING HE DIDN'T TAKE THE MONEY?

7 A. NO. HE SAID, "I'M GIVING YOU THAT TO SMOKE."

8 Q. AND WHAT HAPPENED RIGHT AFTER THAT WHERE HE TOLD YOU,  
9 "I'M GIVING YOU THAT TO SMOKE"?

10 A. I WALKED TO THE EAST CURB TO A LITTLE ALCOVE AND I  
11 JUST KIND OF HESITATED WHILE HE WAITED FOR ME TO SMOKE IT IN  
12 FRONT OF HIM.

13 Q. AND YOU WOULDN'T SMOKE IT?

14 A. NO.

15 Q. IS THAT WHEN YOU GAVE THE SIGNAL TO THE OTHER OFFICERS  
16 TO ARREST MY CLIENT?

17 A. I GAVE THEM THE SIGNAL WHEN HE GAVE ME THE  
18 SUBSTANCE.

19 Q. HOW LONG DID IT TAKE TO ARREST MY CLIENT?

20 A. AGAIN, ESTIMATION, 30, 40 SECONDS.

21 Q. THERE WAS ALSO ANOTHER PERSON PRESENT, CORRECT?

22 A. YES. THERE WAS A WHITE MALE IN THE DRIVER'S LICENSE  
23 SEAT OF THE VEHICLE.

24 Q. DO YOU HAVE THE REPORT WITH YOU?

25 A. I HAVE MY REPORT, YES.

26 Q. THAT PERSON'S NAME WAS DELBERT ROSE, CORRECT?

27 A. YES.

28 Q. HE WAS ON THE DRIVER'S SIDE OF THAT VEHICLE?

DEFENDANT: Lines 10, 11, 12 - while he waited on me  
to smoke it in front of him.  
Anderson was suppose to be sitting in vehicle.

1 A. CORRECT.

2 Q. MR. ROSE WAS ALSO ARRESTED?

3 A. HE WAS.

4 Q. WHAT DID YOU ARREST HIM FOR?

5 A. I DIDN'T ARREST HIM. THE OFFICER ON THE SCENE  
6 ARRESTED HIM FOR POSSESSION.

7 Q. FOR POSSESSION?

8 A. YES.

9 Q. WAS HE ARRESTED JUST FOR POSSESSION OR POSSESSION FOR  
10 SALE?

11 A. JUST POSSESSION.

12 Q. AND WHEN YOU SEARCHED MY CLIENT, WAS THERE ANY SALES  
13 INDICIA FOUND ON HIS PERSON?

14 A. I, AGAIN, I DIDN'T SEARCH HIM. BUT THE OFFICER WHO  
15 DID SEARCH HIM JUST FOUND THE PIPES.

16 Q. THAT WAS IT?

17 A. SOME MONEY AND CELL PHONE.

18 Q. BUT THE PIPES, THAT'S INDICIA ASSOCIATED WITH  
19 PERSONALLY USING FOR THEMSELVES, CORRECT?

20 A. YES.

21 Q. DID YOU FIND A SCALE?

22 A. NO.

23 Q. DID YOU FIND ANY PAY-OWE SHEETS?

24 A. NO.

25 Q. DID YOU FIND ANY BAGGIES?

26 A. NO.

27 Q. DID YOU FIND ANY BAGGIES INSIDE THE CAR?

28 A. NO. I DON'T BELIEVE THE OFFICER WILSON FOUND

DEFENDANT: NEVER POSS, A CELL PHONE 73  
OR ARRESTED WITH ONE.

EXHIBIT E

15

1 ANYTHING.

2 Q. OR ANY OTHER OFFICER?

3 A. NO.

4 Q. WAS THERE A SCALE FOUND INSIDE THE CAR?

5 A. NO.

6 Q. SO THEN THERE WAS ACTUALLY NO SALES INDICIA, WOULD  
7 THAT BE A CORRECT STATEMENT, ON MY CLIENT'S PERSON?

8 MR. REIZEN: OBJECTION; CALLS FOR SPECULATION.

9 THE COURT: OVERRULED.

10 BY MR. HERNANDEZ:

11 Q. YOU MAY ANSWER.

12 A. LIKE I SAID, NO THERE WAS NOTHING ELSE FOUND.

13 MR. HERNANDEZ: MAY I HAVE A MOMENT, YOUR HONOR?

14 THE COURT: SURE.

15 BY MR. HERNANDEZ:

16 Q. WHEN YOU SEARCHED HIM, OFFICER, YOU SAID YOU FOUND A  
17 CELL PHONE ON HIM, ON MY CLIENT?

18 A. OFFICER WILSON IMPOUNDED A CELL PHONE. I DON'T KNOW  
19 WHERE HE FOUND IT.

20 Q. BUT YOU JUST KNOW A CELL PHONE WAS IMPOUNDED?

21 A. CORRECT.

22 Q. YOU DON'T KNOW WHERE THAT CELL PHONE CAME FROM?

23 A. NO, I DON'T.

24 Q. IF YOU WANT TO LOOK AT YOUR REPORT TO GET  
25 CLARIFICATION?

26 A. I WOULDN'T PUT THAT IN MY REPORT. OFFICER WILSON  
27 WOULD HAVE TO ANSWER THAT.

28 Q. AS YOU SIT HERE RIGHT NOW, YOU DON'T KNOW WHERE THAT

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DEFENDANT; FALSE STATEMENT FROM CHAVEZ.

OFFICER WILSON DID NOT ARREST ANDERSON.  
WITH A CELL PHONE.

EXHIBIT F



**EXHIBIT F**

Continued From: CRIME		<b>San Diego Regional Officer's Report Narrative</b>		Incident Number 06040008348	
Page 1 of 2				Case Number	
Code Section And Description (one incident only) HS / 11352(A) / TRANSPORT/SELL NARCOTIC/CONTROLLED SUBSTANCE		Date 04/05/2006		Day of Week WED	Time 22:15
Location Of Incident (Or Address) 1000 07th Ave		City SAN DIEGO		District	Beat 524
Person(s) Involved: Victim					
Suspect (If Named) Anderson, Robbye					
Property Tag No.(s)					

**SAN DIEGO POLICE DEPARTMENT  
INVESTIGATOR'S REPORT**

DATE: 04-05-06

TIME: 2215 hrs

LOCATION: 1000 7<sup>th</sup> Ave

SUBJECT: BUY/BUST PROGRAM, ARREST OF ROBBYE ANDERSON

On the above listed date and time I was in full Police uniform and driving a marked Police vehicle. I am assigned to the Central Narcotics Section and we were working a buy/bust program in the area of 1000 7<sup>th</sup> Ave.

Detective **CHAVEZ** was sent into the area to purchase illegal controlled substances from street level dealers. Prior to Detective [REDACTED] being sent into the area, he was given pre-recorded U.S. currency. I was given a photocopy of the money to be used prior to the operation.

Additional members of the Central Narcotics Section were assigned to monitor the undercover officer. At the above listed time, Detective [REDACTED] advised via radio Detective [REDACTED] was successful in purchasing a controlled substance. From Detective [REDACTED] earlier description the suspect was a black male wearing dark pants located in an out cove with Detective [REDACTED] on the 1000 block of 7<sup>th</sup> Ave. I entered the area and located Detective [REDACTED] who was still standing with Anderson, who matched the description. As I pulled up Detective [REDACTED] stood began to walk north as Anderson began to walk south. I detained Anderson until identification could be made.

Detective [REDACTED] returned to the area immediately and positively identified Anderson as the subject who sold him the controlled substance.

I searched Anderson incident to arrest and located the following evidence: **OFFICER WILSON**

- 1) A glass pipe used to smoke a cocaine base substance was located in a cigarette pack in his left coat pocket.

Reporting Officer [REDACTED]	ID # [REDACTED]	Division [REDACTED]	Approved By [REDACTED]	Date of Report 04/05/2006	Time 15:58
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Continued Y

**EXHIBIT F**

Continued From: AFR/JUV:CON.		<b>San Diego Regional Officer's Report Narrative</b>		Incident Number 06040008348	
Page 5 of 8				Case Number	
Code Section And Description (one incident only) 11352(A) / HS / TRANSPORT/SELL NARCOTIC/CONTRO			Date 04/04/2006	Day of Week TUE	Time 22:15
Location Of Incident (Or Address) 1000 07TH AV			City	District	Beat
Person(s) Involved: Victim					
Suspect (If Named) Anderson, Robbye Ray					
Property Tag No.(s) HQ050390					

robberies and other peripheral crimes occurring in the vicinity. I have been involved in approximately 100 narcotic related arrests from this location in the past four years. I have witnessed the sales of narcotics, particularly "rock" cocaine, from this location. I have also been involved in several undercover operations, where narcotics were purchased in this area.

**INVESTIGATION:**

On the above listed date and time we were conducting a buy/bust operation in the area of 200-700 C St. I went into the area to purchase narcotics from street level dealers. I was dressed in casual attire.

I had in my possession one pre-recorded twenty-dollar bill, serial number CG89175367B and two five dollar bills, serial numbers DB26465261B, DL95897531A. The currency was used to purchase narcotics.

I wore a one-way transmitter to allow team members to listen to my conversation and to assist in monitoring my safety. (Other team members monitored the transmitter.) My conversations were not recorded. Uniformed officers were in the immediate area awaiting the pre-determined bust signal and suspect description(s).

While posing as a user/buyer of narcotics I entered the area of 500 C St on foot. I was walking eastbound entering the 600 block of C St. I asked a black male walking westbound 600 C St. if he had a twenty. This is slang for, "do you have twenty dollars worth of controlled substance?" The black male was later identified as Robbye Ray Anderson. Anderson looked at me and said, "Yeah, but I don't know you." I told Anderson everyone in the area said the same thing and no one wanted to deal with me. Anderson asked me if I had a pipe and I said, "Yeah," and showed him my pipe. Anderson told me to follow him. We began walking eastbound 600 C St. I asked Anderson what his name was and he said, "Ray." I told him I was Jose and we continued walking eastbound on C St. Anderson went southbound on 7<sup>th</sup> Ave from C St (east curb). Anderson got into the front passengers seat of a 1993, green, Ford Explorer (CA 5TBE977), which was parked on the east curb.

Anderson told me to get in the back seat of the vehicle so I could smoke some controlled substance. I told Anderson I was robbed last week and was not comfortable getting in the car with them. There was a white male sitting in the driver's seat of the vehicle. The white male was later identified as Delbert Rose DOB 11-11-55. Anderson told me nothing was going to happen and again asked me to get in the car. I asked Anderson to just sell the twenty so I could go. I continued to express my concern about being robbed. Anderson said, "I'm not going to rob you." Anderson showed me a large plastic bindle containing off white rock like substance in his left hand. I estimated the bindle to contain about three grams of what I recognized to be cocaine base. I continued to ask Anderson for a twenty. Anderson then gave me three small pieces of

Reporting Officer	ID #	Division	Approved By	Date of Report 04/05/2006	Time 17:39
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Continued Y

Continued From: ARR/JUV. CON.		<b>San Diego Regional Officer's Report Narrative</b>		Incident Number 06040008348 <span style="float: right; font-size: 2em;">2</span>	
Page 6 of 8				Case Number	
Code Section And Description (one incident only) 11352(A) / HS / TRANSPORT/SELL NARCOTIC/CONTRO			Date 04/04/2006	Day of Week TUE	Time 22:15
Location Of Incident (Or Address) 1000 07TH AV			City	District	Beat
Person(s) Involved: Victim					
Suspect (If Named) Anderson, Robbye Ray					
Property Tag No.(s) HQ050390					

off white rock like substance with his right hand. He put the substance in my left hand and told me to smoke it. Anderson was still sitting in the front passengers seat of the parked vehicle. I began to give Anderson my prerecorded twenty-dollar bill with my right hand. I asked Anderson if he was going to give me more when I smoked the pieces he gave me. Anderson said, "I don't want that (referring to my twenty dollar bill), I'm giving you that to smoke." Anderson told me to smoke it.

Based on my training and experience I believed the substance Anderson furnished to me was cocaine base. Since I was not going to smoke the substance I gave the pre-determined bust signal. I walked to an out cove (1000 7<sup>th</sup> Ave) to pretend to smoke the substance. Anderson was standing next to me waiting for me to smoke the substance he gave me. Officer [REDACTED] arrived on scene and Anderson began walking southbound 1000 7<sup>th</sup> Ave. Anderson said, "Your'e on your own." I walked away northbound on 7<sup>th</sup> Ave. I saw Officer [REDACTED] detain Anderson while I was still in the area. I positively identified Anderson as the individual who gave me the controlled substance, via the wire. I also advised, via the wire, that there was a white male in the driver's seat of the parked car. I requested Officer [REDACTED] ID [REDACTED] stop the white male in the vehicle to ensure Anderson was not hiding the controlled substance in the vehicle. Officer [REDACTED] did not locate the substance I saw in Anderson's left hand inside of the vehicle. See Officer [REDACTED] arrest report of the white male [REDACTED] for details.

Officer [REDACTED] searched Anderson incident to arrest and found two glass narcotic smoking pipes in his left coat pocket. The pipes were inside a GPC cigarette box.

Anderson was placed under arrest and transported to the Central Division Substation for further investigation. At the station I asked Anderson if I looked familiar to him and he paused for several seconds. Anderson said, "You the guy in the black coat?" I told Anderson I was the guy in the black coat. Anderson said, "I did not sell you anything." I explained Anderson the charges and began to admonish him.

#### STATEMENT:

admonished Anderson per my PD-145. Anderson did not respond when I asked him if he understood his rights. I attempted to explain his rights to him and he said, "I did not sell you anything. I did not give you anything." Anderson remained quiet after that comment.

#### NJURIES:

None.

Reporting Officer [REDACTED]	ID # [REDACTED]	Division [REDACTED]	Approved By [REDACTED]	Date of Report 04/05/2006	Time 17:39
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Continued Y.0

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EXHIBIT F

3

SAN DIEGO POLICE DEPARTMENT — NARCOTIC IMPOUND				HQ- 050390
DATE <u>04-04-06</u>		<input checked="" type="checkbox"/> EVIDENCE	TYPE OF REPORT MADE (IF NONE LEAVE BLANK)	
<input type="checkbox"/> OTHER (EXPLAIN IN REMARKS BELOW)		<input type="checkbox"/> FOUND PROPERTY	<input checked="" type="checkbox"/> ARREST <input type="checkbox"/> JCR <input type="checkbox"/> OTHER <input type="checkbox"/> CRIME CASE/SPECIFIC TYPE	
SUSPECT/VICTIM (PLEASE PRINT BELOW) <input type="checkbox"/> HOLD FOR PRINTS			CASE NO. <u>#20<sup>02</sup> NOT TAKEN</u>	
			CITATION NO.	
			INCIDENT NO. <u>06040008348</u>	
1. NAME: <u>ANDERSON, ROBBY</u>		DOB <u>11-21-57</u>	ADULT <input checked="" type="checkbox"/> JUV <input type="checkbox"/>	Charges <u>11352(a) HES</u>
2. NAME:		ADULT <input type="checkbox"/> JUV <input type="checkbox"/> D.O.B.	3. NAME	
		<input type="checkbox"/> <input type="checkbox"/> D.O.B.		
ITEM NO.	NO. OF PKGS.	DESCRIPTION OF EVIDENCE		GROSS WEIGHT
1	1	(3) PIECES OF OFF WHITE ROCK LIKE SUBSTANCE SOLD/GIVEN		
2		TO ME BY ANDERSON. * .07 GRAMS COC. BASE		
3		(1) GLASS NARCOTIC SMOKING PIPE FOUND ON ANDERSON		
4		BY OFF WILSON *		
5		(1) UNUSED GLASS PIPE WITH BRILLO		
6				
<input type="checkbox"/> ADDITIONAL PROPERTY LIST ATTACHED IF MORE THAN 6 ITEMS				
ADDRESS/LOCATION: <u>1000 7TH AVE</u>		BEAT: <u>524</u>	REMARKS: <u>* POSITIVE PRESUMATIVE FOR COCAINE</u>	
WHERE IMPOUNDED: <u>HQ</u>	DATE: <u>04-05-06</u>	TIME:	OFFICER RECOVERING PROPERTY (IF DIFFERENT THAN IMPOUNDING OFFICER):	
TRANSPORTED BY (IF DIFFERENT THAN IMPOUNDING OFFICER):		IMPOUNDING OFFICER(S):		ASSIGNMENT:
I.D. #:		I.D. #:		
<b>LAB USE ONLY</b> EXAMINED BY: _____ DATE: _____ RESULTS: _____ RECEIVED SEALED: <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> D.N. SENT: _____ CT ANALYSIS BY: _____ DATE: _____ RECEIVED IN NARCOTICS VAULT: _____ DATE: _____ PD-235-HQ (11-04)   GREEN: VAULT COPY — ATTACH TO IMPOUND   BLUE: INVESTIGATOR COPY   CANARY: STAYS IN BOOK   HARD COPY: ATTACH TO IMPOUND				

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EXHIBIT G

EXHIBIT B

## ABSTRACT OF JUDGMENT - PRISON COMMITTEE - DETERMINATE

[NOT VALID WITHOUT COMPLETED PAGE TWO OF CR-290 ATTACHED]

0119 CR-290

<input checked="" type="checkbox"/> SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>SAN DIEGO</b> <input type="checkbox"/> MUNICIPAL BRANCH OR JUDICIAL DISTRICT <b>SAN DIEGO</b>		<b>FILED</b> Clerk of the Superior Court <b>SEP 20 2006</b> By: K. D. STURDIVANT, Deputy		
PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: <b>ANDERSON, ROBBYE RAY</b>				DOB: <b>11-20-57</b>
AKA: <b>Multiple, see PO report</b>				<b>SCD 198047 -A</b>
CII#: <b>05325569</b>				<b>-B</b>
BOOKING #: <b>06114714A</b>		<input type="checkbox"/> NOT PRESENT		
COMMITMENT TO STATE PRISON ABSTRACT OF JUDGMENT		<input type="checkbox"/> AMENDED ABSTRACT		
DATE OF HEARING <b>09-09-06</b>		DEPT. NO. <b>28</b>		
CLERK <b>K. STURDIVANT</b>		JUDGE <b>DAVID M. GILL</b>		
COUNSEL FOR PEOPLE <b>AMY MAUND</b>		PROBATION NO. OR PROBATION OFFICER <b>PROB. NO. 739029</b>		
COUNSEL FOR DEFENDANT <b>ANTHONY HERNANDEZ</b>		<input checked="" type="checkbox"/> APPTD.		

## 1. Defendant was convicted of the commission of the following felonies:

- ☐ Additional counts are listed on attachment  
 (number of pages attached)

CNT.	CODE	SECTION NO.	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (MO./DATE/YEAR)	CONVICTED BY			TERM (L-M, U)	CONCURRENT	CONSECUTIVE 1/3 VIOLENT	CONSECUTIVE 1/3 NON-VIOLENT	CONSECUTIVE FULL TERM	INCOMPLETE SENTENCE (see to item 9)	654 STAY	PRINCIPAL OR CONSECUTIVE TIME IMPOSED	
						JURY	COURT	PLEA								YRS.	MOS.
1	HS	11352(a)	SELL/FURN CONTR'SUBS	2006	07-27-06	X			L							6	0
2	HS	11351.5	POSS/SALE COCAINE BASE	2006	07-27-06	X									X		

## 2. ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS (mainly in the PC 12022 series). List each count enhancement horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST enhancements stricken under PC 1385.

CNT.	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL
1	HS 11370.2(a)	3							3 0
2	HS 11370.2(a)	S							

## 3. ENHANCEMENTS charged and found to be true FOR PRIOR CONVICTION OR PRISON TERMS (mainly in the PC 667 series). List all enhancements horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST enhancements stricken under PC 1385.

ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL
667.5(b)	1							1 0

4. ☒ Defendant was sentenced pursuant to PC 667 (b)-(i) or PC 1170.12 (two-strikes).

## 5. INCOMPLETED SENTENCE(S) CONSECUTIVE

COUNTY	CASE NUMBER

6. TOTAL TIME ON ATTACHED PAGES:

7. ☐ Additional indeterminate term (see CR-292).

8. TOTAL TIME: 10 0

This form is prescribed under PC 1213.5 to satisfy the requirements of PC 1213 for determinate sentences. Attachments may be used but must be referred to in this document.  
 (Continued on reverse)

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PEOPLE OF THE STATE OF CALIFORNIA vs.

DEFENDANT: **ROBBYE RAY ANDERSON**

0120

SCD 198047

-A

-B

-C

-D

## 9. FINANCIAL OBLIGATIONS (including any applicable penalty assessments):

- a. RESTITUTION FINE of: **\$2000** per PC 1202.4(b) forthwith per PC 2085.5.
- b. RESTITUTION FINE of: **\$2000** per PC 1202.45 suspended unless parole is revoked.
- c. RESTITUTION of: \$\_\_\_\_\_ per PC 1202.4(f) to ☐ victim(s)\* ☐ Restitution Fund  
(\*List victim name(s) if known and amount breakdown in item 11, below.)  
(1) ☐ Amount to be determined.  
(2) ☐ Interest rate of: \_\_\_\_% (not to exceed 10% per PC 1202.4(f)(3)(F)).
- d. ☐ LAB FEE of: \$\_\_\_\_\_ for counts: \_\_\_\_\_ per H&SC 11372.5(a).
- e. ☐ DRUG PROGRAM FEE of \$150 per H&SC 11372.7(a).
- f. ☐ FINE of \$\_\_\_\_\_ per PC 1202.5.

## 10. TESTING

- a. ☐ AIDS pursuant to ☐ PC 1202.1 ☐ other (specify):
- b. ☒ DNA pursuant to ☒ PC 290.2 ☐ other (specify):

## 11. Other orders (specify):

\$40 Court security fee; Firearms prohibition pursuant to PC 12021

## 12. Execution of sentence imposed

- a. ☒ at initial sentencing hearing.
- b. ☐ at resentencing per decision on appeal.
- c. ☐ after revocation of probation.
- d. ☐ at resentencing per recall of commitment. (PC 1170(d).)
- e. ☐ other (specify):

## 13. CREDIT FOR TIME SERVED

CASE NUMBER	TOTAL CREDITS	ACTUAL	LOCAL CONDUCT
SCD 198047 -A	253	169	84 <input checked="" type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
-B			<input type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
-C			<input type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
-D			<input type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
DATE SENTENCE PRONOUNCED: 09-19-06	SERVED TIME IN STATE INSTITUTION: <input type="checkbox"/> DMH <input type="checkbox"/> CDC <input type="checkbox"/> CRC		

14. The defendant is remanded to the custody of the sheriff ☒ forthwith ☐ after 48 hours excluding Saturdays, Sundays, and holidays.

To be delivered to ☒ the reception center designated by the director of the California Department of Corrections.  
☐ other (specify): \_\_\_\_\_

## CLERK OF THE COURT

I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

DEPUTY'S SIGNATURE K. Sturdivant	DATE 09-19-06
-------------------------------------	------------------



5 1 CIRCUMSTANCE. HE'S HAD THE BENEFIT OF RESOURCES AND SUPPORT,  
2 WHICH THE MAJORITY OF THE DEFENDANTS DO NOT WHO COME BEFORE THE  
3 COURT. HE STILL HASN'T BEEN ABLE TO TAKE ADVANTAGE OF THAT TO  
4 THE EXTENT OF REOFFENDING.

5 HE KNOWS THE LAW. HE KNOWS WHAT HE'S FACING. OF  
6 COURSE IN A COURSE OF CRIMINALITY YOU CONTINUE TO REOFFEND.  
7 WE'RE NOT GOING TO TREAT YOU AS A DE MINIMUS OFFENDER OR SHORT  
8 TIME DEFENDANT. NOTHING EXTRAORDINARY. THE LAST TIME AROUND HE  
9 SOLD -- IN 2000, SOLD \$20 OF COCAINE TO AN UNDERCOVER OFFICER,  
10 RIGHT BEGAN DOING THE SAME THING HERE. I DON'T THINK HE LEARNED  
11 MUCH FROM THAT.

12 MR. HERNANDEZ: MAY I CONTINUE, YOUR HONOR?

13 THE COURT: YES, PLEASE.

14 MR. HERNANDEZ: THANK YOU.

15 I DO, WITH ALL DUE RESPECT TO THE COURT'S COMMENTS,  
16 I WILL SAY THAT, YOU KNOW, I DON'T MEAN TO BE FACETIOUS BUT I AM  
17 NOT A DRUG ADDICT MYSELF. I DON'T KNOW THE DEGREE OF SEVERITY,  
18 HOW SERIOUSLY ARE DRUG ADDICTS. JUST SAY THAT HE IS. ALSO SAY  
19 IN THIS 1994 STRIKE CONVICTION, WHICH IS MINIMAL, INVOLVED  
20 MINIMAL ARGUMENTS, THE PROSECUTOR DID HAVE A LIST OF PACKETS.  
21 IT'S CONJECTURE, BUT PERHAPS THAT WOULD BE LITIGATED. I JUST  
22 OVERHEARD, THERE'S ON THE FACTS BEHIND THAT, IT WAS AN ESTES  
23 ROBBERY.

24 I DID ALSO NOTE IN MY MOVING PAPERS THAT THERE ARE  
25 INDICATIONS, AND I TOOK FROM THE PROBATION OFFICER, HE WAS UNDER  
26 THE INFLUENCE OF DRUGS, AND IT'S CLEAR HE'S A VERY SERIOUS DRUG  
27 ADDICT.

28 THE COURT: WELL, ON THAT POINT I THINK YOU HAVE TO -- AT

EXHIBIT G

0073

1  
2 All references are to the California Rules of Court.

3  
4 I.

5 SUMMARY OF FACTS [Rule 437(c)(1)]

6 After a jury trial, Robbye Anderson was convicted of selling .07  
7 grams of cocaine to an undercover officer.

8 II.

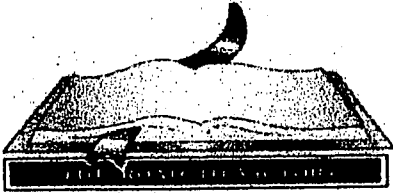
9 THE COURT SHOULD STRIKE THE  
10 SERIOUS FELONY PRIOR CONVICTION  
11 ROMERO FACTORS ENUMERATED

12 To assist the court the following factors enumerate and summarize  
13 why the court should strike the prior conviction:

14 To assist the court the following factors enumerate and summarize  
15 why the court should strike the prior conviction:

- 16 1. The prior stricken which occurred in 1994 is remote in time.  
17 2. Anderson's prior was a PC 211, when he swung a hammer at a 7 11  
18 employee in order to facilitate the taking of a bottle of Snapple,  
19 hence and Estes Robbery. At that time, it appeared to the victim  
20 that Anderson was under the influence of a controlled substance.  
21 3. The defendant's criminal history displays minimal violence.  
22 4. The current offense is not a serious or violent felony.  
23 5. The punishment under the three strikes law is disproportionate to  
24 the severity of the current offense.  
25 6. The defendant's criminal history is a result of the defendant's  
26 addiction to controlled substances.  
27  
28

EXHIBIT G



# Greater Victory 003

## Baptist Church

G. A. Williams, D.Min. - Pastor

P. O. Box 94 ~ Lemon Grove, California 91945 ~ (619) 668-6925

*"Bringing them in; Growing them up; Sending them forth to serve; Preparing for Christ return"*

June 23, 2006

### Character Reference Letter for Mr. Robbye Anderson

To Whom It May Concern:

I, Pastor G. A. Williams, am writing this Character Reference letter for Mr. Robbye Anderson, a member of Greater Victory Baptist Church.

I have served as Mr. Anderson's pastor for 2 years. In this time, I have baptized him; lead him through Church Orientation and New Disciples Classes. Observed him in our Men's Fellowship, assisted him in leading his children to the Lord, and united him in marriage to a wonderful young Christian woman, whom he has known for several years.

I have had numerous opportunities to observe him on the front line of public ministry, as well as opportunities to fellowship with him in a more private setting. However, in both arenas, Mr. Anderson has demonstrated a practical faith that is consistent with the message proclaimed through the Bible and the message proclaimed through him.

Having served as his pastor and overseer in ministry, I can truly say that Mr. Anderson has a genuine desire to be a model of genuine Christian character. In him I see a fluid continuity from biblical precept to practice in his behavior. He has a firm grip on good moral conduct and is highly respected by his peers for his unwavering stance against wrong behavior. In our church, he serves as an Armor Bearer to the Pastor.

While having a clear focus on this new direction in his life, he is fully aware of his personal struggle to escape from the failures of his past that continue to plague him in the present. Nonetheless, he has made a tremendous turnaround and we hope to be able to continue to work with him in this endeavor.

Should any further information be needed from me, I may be contacted via email, [pastorga@cox.net](mailto:pastorga@cox.net), or at my office, (619) 819-1822.

Humbly Submitted,

Rev. G. A. Williams, D.Min.  
Senior Pastor

84

EXHIBIT G

385

2  
1 PASTOR WILLIAMS: I'M PASTOR WILLIAMS. I AM THE PASTOR  
2 OF THE ANDERSON FAMILY. AND I'M ALSO A CASE MANAGER AND  
3 CHAPLAIN AT THE SAN DIEGO RESCUE MISSION WHERE ROBBYE DID A  
4 RESIDENCY THERE FOR QUITE SOME TIME.

5 I BELIEVE I ADDRESSED ALL OF THAT IN THE LETTER,  
6 BUT I'M HERE IN SUPPORT OF THE FAMILY AS WELL AS IN SUPPORT OF  
7 ROBBYE ANDERSON.

8 I WANT TO DITTO WHAT HIS WIFE HAS JUST MENTIONED,  
9 THAT HE HAS HAD A PROBLEM IN THE PAST. HOWEVER, AS HIS CASE  
10 MANAGER AND DRUG COUNSELOR AT THE SAN DIEGO RESCUE MISSION HE  
11 DID AN OUTSTANDING JOB THERE, WAS AN EXEMPLARY RESIDENT THERE.  
12 AND HOWEVER, ANY ADDICTION PROBLEM IS A LIFELONG RECOVERY  
13 PROCESS. AND HE HAS MADE SOME GREAT STRIDES IN THAT PROCESS. I  
14 THINK THE FACT THAT HE WAS RELEASED FROM PROBATION AT ONE TIME  
15 INDICATES PROGRESS IN HIS LIFELONG RECOVERY PROCESS.

16 WE'RE ASKING FOR THE COURT TO EXTEND MERCY TO HIM  
17 AND RELEASE HIM BACK INTO OUR CUSTODY ON PROBATION SO THAT WE  
18 CAN CONTINUE WORKING WITH HIM AS WE HAVE IN THE PAST. I THINK  
19 THIS WOULD BE A BETTER BENEFIT NOT ONLY TO SOCIETY BUT TO HIS  
20 FAMILY.

21 HE IS NOT A THREAT TO SOCIETY. TO PUT HIM AWAY  
22 FROM SOCIETY WOULD NOT BE DOING THE FAMILY ANY GOOD, WHICH IS OF  
23 GREAT CONCERN, AND CERTAINLY WOULD NOT BE DOING HIM OF ANY GOOD  
24 AS WELL.

25 SO ONCE AGAIN, WE'RE JUST ASKING FOR THE COURT, BY  
26 WAY OF YOU, YOUR HONOR, TO EXTEND MERCY AND RECEIVE THE  
27 RECOMMENDATION OF HIS ATTORNEY, WHICH WOULD BE PROBATION,  
28 RELEASING HIM BACK INTO THE CARE OF THE PROBATIONARY DEPARTMENT

85

EXHIBIT G

0079



# Greater Victory Baptist Church

G. A. Williams, D.D.M. - Pastor

P. O. Box 94 ~ Lemon Grove, California 91945 ~ (619) 668-6925

*"Bringing them in; Growing them up; Sending them forth to serve; Preparing for Christ's return"*

July 28, 2006

## Character Reference Letter for Mr. Robbye Anderson

To Whom It May Concern:

I, Rev. Bryon Barmer, am writing this Character Reference letter for Mr. Robbye Anderson, a member of Greater Victory Baptist Church.

I have known Mr. Anderson for 2 years. In this time, I have seen Robbye grow in his walk with the Lord. I have watched him complete his Church Orientation and New Disciples Classes and take an active role in our Men's Ministry.

I have had occasions to fellowship with Mr. Anderson and his family both in private settings as well as in public ministry and as a San Diego Police officer, of twenty years I have been impressed with Robbye's determination to change the direction of his life. He demonstrates this by the love and care that he shows for his family as well as his church family. He has a true desire to learn and implement the precepts of the Bible into his everyday behavior. Robbye Anderson has earned the respect of his peers at church by being consistent in his actions. He is striving to develop the characteristics of a strong and dependable husband, father, and friend, by allowing his faith in God to be his moral compass. He understands that these characteristics need to be developed through the Word of God. As a man of God, I feel compelled to assist Robbye in developing an unwavering stance against wrong or inappropriate behavior.

Again as a San Diego Police Officer II of twenty years and Associate Pastor of Greater Victory Church, I ask that you consider the tremendous growth that Mr. Anderson has shown. I also request that you allow us, his Greater Victory family, to continue to assist him in his journey.

Should any further information be needed, I may be contacted via email at, [greatervictory@netscape.com](mailto:greatervictory@netscape.com).

Humbly Submitted,

Rev. Bryon Barmer  
Associate Pastor

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EXHIBIT G

0102

CT No. CD198047  
DA No. ABT155

F I L E D  
Clerk of the Superior Court

SEP 15 2006

Letter of Consideration  
Case#SCD198047

By: J. WILHELM, Deputy

To: Judge David Gil  
From: Inmate Robbye Ray Anderson

Re: Leniency in Sentencing

Judge Gill,

As of 07-27-06, the day of my trial ended with the verdict of guilty for 3 charges, I, Robbye Ray Anderson, hereby present this document on this date of September 01, 2006. This is in hope that your keen insight, you ability to reason and understand, and wisdom will be comprehensive in my plight to seek leniency at sentencing. I am sure you are a man of great integrity and impartial judgment.

On the night of April 04, 20006, I supposedly furnished Officer Chavez a controlled substance. I honestly did not aid Officer Chavez in any way. At the time I was under a physician's care (Kaiser Permanente, Dr Thigpen) due to a brutal attack I received one month prior to my incarceration. In this attack I received major trauma to my skull due to the assault on my life which severed by skull in several places, a broken jaw in three places, a broken left finger and fractures to the other hand. As a result, the injures I received, surgery was performed on my jaw and a pin placed in my finger. This did cause a lot of trauma to me psychologically and made me nervous. The injuries most definitely left me paranoid. My attorney, Anthony Hernandez has all medical records to verify the legitimacy of my medical condition stated.

Your Honor, however, I did think of assisting the officer in purchasing drugs but realized it was not in my best interest to do so. I can honestly say I am guilty of having paraphernalia that was in my possession upon my arrest. There is no logical theory that explains that I gave the officer any drugs when in fact, I had been a habitual drug user myself.

Your Honor, I am very well aware that I have a history associated with drugs and drug addiction, to be in denial would be foolish. And yes, I've made ill-logical choices in my life as well. Please don't misunderstand, that does not mean that I haven't made attempts to change, because that would be untrue. After paroling 10/26/04 from Salinas Valley, I entered a spiritual growth program called, Life Ministries Rescue Mission. Any information that is needed can be questioned by G.A. Williams at (619-819-1822). After six months of recovery, I met someone special, and became married to my wife, (Minister) Mrs., Sonja Kaye Daniels-Anderson. During the course of our marriage, I've stayed clean and sober and became spiritually involved in my church "Greater Victory".

87

EXHIBIT 6

0103

In December 2005 I was discharged from parole under the guidance of Agent Murphy. His number is (619) 718-7800.

Judge Gill, I ask form the inner depths of my soul as a human being that you understand I need mercy regarding my sentence. I Robbye R. Anderson have been honestly man enough to admit that I have been guilty in the past, and did admit to that guilt. I accepted the punishment according to the law. If I knowingly broke the law on all of the assumed charges, I would have admitted my guilt before the courts just as I have in the past. You see, Your Honor, I have a lovely wife that I love, she loves me and needs me along with our six children (2 are teenagers). My wife needs her husband, my children need their father, and we need each other! In addition, I have a loving mother in her late seventies and single, God knows, I'd love to see her again and be able to continue help take care of her.

In conclusion Your Honor, I understand the law is the law and why it was established. However, I believe the charges against me are fabricated and without merit. I am confident that you understand my plight and the reason I wrote the letter. It is simply, because I am innocent of counts 1 and 2.

Judge Gill, please consider my family's needs and my presence in their lives. I place my faith in God's hands, in you rendering a justifiable sentence. May God bear witness to the righteousness of your heart in this decision.

Sincerely,



Robbye Ray Anderson



JS 44 (Rev. 12/07)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

ROBBYE RAY ANDERSON

(b) County of Residence of First Listed Plaintiff RIVERSIDE CO.  
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorney's (Firm Name, Address, and Telephone Number) C.R.C.  
DORM 303-224 / P.O. BOX 3535  
NORCO, CA. 92860

## DEFENDANTS

STATE OF CALIFORNIA

County of Residence of First Listed Defendant SAN DIEGO, CO.  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

STATE ATTORNEY

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☒ PTF ☐ DEF ☐ 1 Incorporated or Principal Place of Business In This State ☐ PTF ☒ DEF ☐ 4
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	PERSONAL INJURY	PERSONAL INJURY	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 424 Other	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 425 Other	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 426 Other	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 427 Other	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 428 Other	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability		<input type="checkbox"/> 690 Other	<input type="checkbox"/> 429 Other	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 430 Other	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract			<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 431 Other	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 432 Other	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 433 Other	<input type="checkbox"/> 890 Other Statutory Actions
			<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 434 Other	<input type="checkbox"/> 891 Agricultural Acts
			<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 435 Other	<input type="checkbox"/> 892 Economic Stabilization Act
				<input type="checkbox"/> 436 Other	<input type="checkbox"/> 893 Environmental Matters
				<input type="checkbox"/> 437 Other	<input type="checkbox"/> 894 Energy Allocation Act
				<input type="checkbox"/> 438 Other	<input type="checkbox"/> 895 Freedom of Information Act
				<input type="checkbox"/> 439 Other	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
				<input type="checkbox"/> 440 Other	<input type="checkbox"/> 950 Constitutionality of State Statutes

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

DUE PROCESS, SIXTH AMENDMENT VIOLATION

Brief description of cause:

PLAINTIFFS WAS DENIED HIS CONSTITUTIONAL RIGHTS

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

NONE

CHECK YES only if demanded in complaint:

JURY DEMAND:

☐ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_



JS44

(Rev. 07/89)

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, nor are they required by local rules of court. This form, approved by the Judicial Conference of the United States in September 1994, is required for the use of the Clerk of Court for the purpose of identifying the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

## I (a) PLAINTIFFS

Robbye Ray Anderson

Martel, et al

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF  
(EXCEPT IN U.S. PLAINTIFF CASES)

Riverside

FILING FEE PAID	
Yes	No
DEFENDANTS	
MOTION FILED	
Yes	No
COMPLAINT TO	
Court	Pro Se

FILED	
JUN - 9 2008	
CLERK, U.S. DISTRICT COURT	
SOUTHERN DISTRICT OF CALIFORNIA	
BY	DEPUTY

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Robbye Ray Anderson  
PO Box 3535  
Norco, CA 92860  
F-39592

ATTORNEYS (IF KNOWN)

'08 CV 1031 W AJB

## II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   |   |   |   |
|---|---|---|---|
| Citizen of This State                   | <input type="checkbox"/> 1 <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

## IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2254

## V. NATURE OF SUIT (PLACE AN x IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act 20 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395K) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(e)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input checked="" type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights			

## VI. ORIGIN (PLACE AN x IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.e.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

## VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE 6/9/2008

SIGNATURE OF ATTORNEY OF RECORD

R. Miller